TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 269 167

THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, TACKLE, APPAREL, &c.; THE ATLAS STEAMSHIP COMPANY (LIMITED), CLAIMANT, APPELLANT,

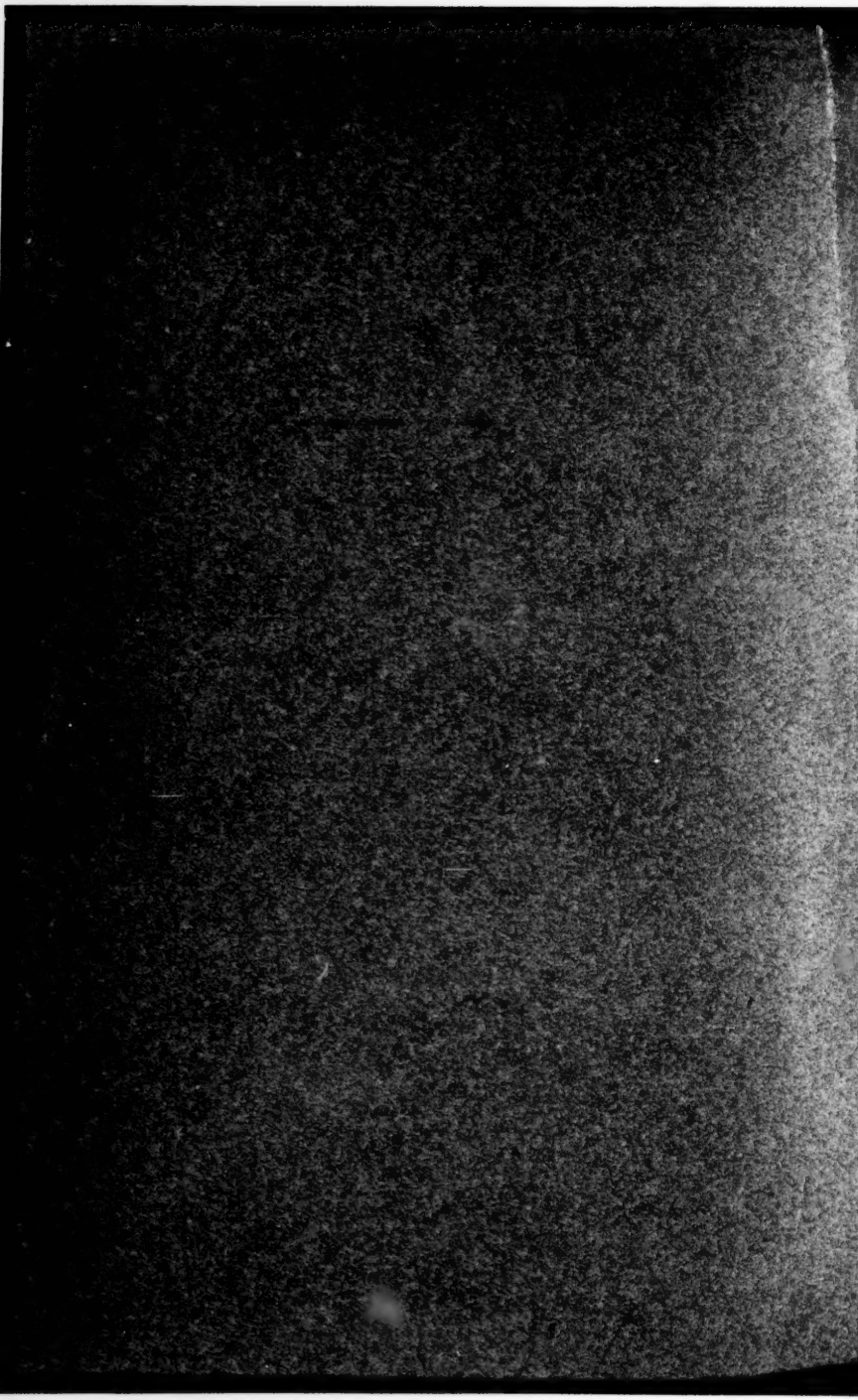
vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED DECEMBER 9, 1902.

(17,213.)



(17,213.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 628

THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, TACKLE, APPAREL, &c.; THE ATLAS STEAMSHIP COMPANY (LIMITED), CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

INDEX.

	Original.	Print.
Libel *in rem*	1	1
Order for process	5	4
Attachment and monition	6	4
Marshal's return	7	5
Claim of owners	8	6
Stipulation for claimant's costs	10	7
Petition of Atlas Steamship Company	11	8
Exhibit A—Charter-party	15	10
B—Letter of agent to Captain Yeates, June 28, 1898	17	12
Order to file answer	19	13
Answer of claimant	20	14
Motion to take further proof and rule *nisi*	27	19
Report of prize commissioners	28	19
Order for bonding and appointing appraisers	30	21
Report of appraisers and oath	32	23
Decree of condemnation	33	24

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 8, 1899.

	Original.	Print.
Notice to United States by claimant	34	24
Affidavit of Robert Gemmell	35	25
Statement referred to in affidavit	42	30
Affidavit of W. P. Forwood	49	35
Exhibit A—Agreement of May 16, 1898	51	36
B—Agreement of May 21, 1898	51	37
C—Letter, Baxter to Forwood, June 12, 1898	53	38
D—Agreement of June 28, 1898	53	38
Answer to motion for further proofs	56	40
Tender by United States of depositions	68	48
Order denying motion for further proofs	69	49
Decree of sale and marshal's return	70	50
Order for marshal to repair machinery	72	52
Petition and order to deliver property to Captain Yeats	73	53
Order to deliver personal property to officers	74	54
Petition and order to deliver property to Captain Walker	76	55
Opinion of the court	78	57
Catalogue and schedule by marshal	97	68
Order appointing Denmark and Schley prize commissioners	102	71
Order adopting rules of district court, southern district of New York	103	72
Standing preparatory interrogatories in prize cases	104	73
Order in relation to interrogatories	117	80
Order appointing Rear Admiral A. E. K. Benham prize commissioner	118	81
Affidavit No. 1—E. A. Anderson, U. S. N. (with inventory)	119	81
No. 2—E. A. Anderson, U. S. N. (with three newspapers)	126	86
Oaths of G. T. Cann and Manning White (stenographers)	127	87
Deposition of J. C. Williamson (*in preparatorio*)	128	88
Captain R. W. Yeats (*in preparatorio*)	137	94
Jose R. Solis (*in preparatorio*)	155	103
Horatio Morris (*in preparatorio*)	178	116
James Clarkson (*in preparatorio*)	187	122
David Hamilton (*in preparatorio*)	198	129
John Darling (*in preparatorio*)	208	136
Testimony of Lieutenant E. A. Anderson, U. S. N	218	143
Wm. Ellenberg	270	176
Freeman Gill	276	180
Letter of instructions, Forwood to Yeats, with copy of "charter"	285	186
Certificate of shipping master as to J. R. Solis	289	189
Descriptive roll of J. R. Solis (shipping articles)	290	190
Nineteen pages of log book (May 9 to July 9, 1898)	291	191
Certified copy of President's proclamation of April 22, 1898	310	211
Certified copy of President's proclamation, June 27, 1898	312	212
Agreement of counsel as to certain letters	314	213
Agreement as to extracts from "The Gleaner" newspaper	318	215
Agreement as to claims of United States war vessels on file	325	219
Bill of health, June 28, 1898	326	219
Personal passport of J. R. Solis	327	220
Translated copies of telegrams	328	220
No. 5—Letter to Sr. Leonardo Ros (translation)	331	222
No. 33—Letter to Sr. Leonardo Ros'y Rodriguez (translation)	332	222
No. 34—Letter to Sr. Jose Marimon from O. Fons (translation)	334	223

	Original.	Print
No. 35—Letter to Mr. Adolphe Corivaldi	337	225
No. 42*a*—Letter to W. G. Beale from L. T. Hughes	338	225
No. 42*b*—Letter to Captain P. M. Beale from L. T. Hughes	340	226
No. 49—Letter to Mrs. Henry Jenkins	342	227
No. 61—Clearance papers, "Adula," June 15, 1898	347	230
No. 64—Agreement between Mr. Fowler and Atlas Steamship Company, May 21, 1898	348	230
No. 62—Letter of instructions to Captain Walker from Forwood	350	231
No. 65—Letter of instructions to Captain Walker from Forwood	352	232
No. 66—Letter to Captain Walker from Captain Forwood, May 21, 1898	354	232
No. 72—Letter from Captain Yeats to his parents, July 13, 1898	357	234
Clearance papers, Adula from Kingston, June 28, 1898	361	237
Notice of appeal	362	238
Assignment of errors	363	238
Order for marshal to sell vessel in New York	368	242
Petition for appeal and order allowing	369	243
Bond on appeal	372	245
Citation and acknowledgment of service	374	246
Order to accept stipulation for value	375	247
Stipulation for value on release	376	247
Order extending time for sending up record on appeal	378	248
Clerk's certificate	379	249

1 *Libel in Rem.*

To the Honorable Emory Speer, judge of the district court of the United States for the southern district of Georgia:

The libel of the United States of America, by Marion Erwin, United States attorney, on behalf as well of the United States as of the officers and crew of the United States ship of war "Marblehead," against the steamship "Adula," her engines, boilers, tackle, apparel, furniture, and cargo.

The said libellant, for and on behalf as aforesaid, doth hereby propound, allege, and declare to this honorable court as follows:

(1.) That on the 29th day of June, 1898, at the port of Guantanamo, in Guantanamo bay, island of Cuba, B. H. McCalla, commander of the United States ship of war "Marblehead," did seize and take possession of, as lawful prize of war, a certain steamship or vessel called the "Adula," one Robert W. Yeates being the master, with her cargo, provisions, engines, boilers, tackle, and all other appurtenances to the said ship belonging.

(2.) That the said steamship "Adula" at the time of her last voyage, terminating with her seizure as aforesaid, was chartered by and under control and direction of one Don Jose R. Solis, a loyal subject of her majesty the Queen Regent of Spain.

(3.) That on the 21st day of April, 1898, a state of war existed between the United States of America and the Kingdom of Spain, and that ever since that time open and public war has existed between the United States and the Kingdom of Spain and its dependencies.

(4.) That on or about the 22nd day of April, 1898, an actual and effective blockade of the port of Cienfuegos, Cuba, was established by the warships of the United States, and public notice of the fact was given to the world by the proclamation of the President of the United States, dated April 22nd, 1898.

(5.) That on or about the 20th day of May, 1898, an actual and effective blockade of the port of Santiago de Cuba was established by the warships of the United States under command of Commodore Schley, and the Spanish fleet, under command of Admiral
2 Cervera, was bottled up in the harbor of Santiago, facts which were notorious throughout the civilized world, and particularly well known in Kingston, Jamaica, which had close cable connection with Santiago.

(6.) That on or about the 8th day of June, 1898, an actual and effective blockade of the port and bay of Guantanamo, Cuba, was established by Commander McCalla, of the "Marblehead," with that ship and other warships of the United States.

(7.) That the blockades of said several ports from the time of their establishment were actual, effective, and continuous to the time of the capture of the "Adula," as aforesaid, and that the fact of such blockade of each of said ports was public, notorious throughout the civilized world, and particularly well known at Kingston, Jamaica.

(8.) That on June 27th, 1898, the President of the United States, by proclamation, declared the existence of a state of blockade of the south coast of Cuba from Cape Frances to Cape Cruz, which included the ports of Santiago, Guantanamo, and Manzanillo, among others, and that this proclamation was well known and notorious at Kingston, Jamaica, on the morning of June 28th, 1898.

(9.) That the fact that United States warships were keeping guard before said ports of Santiago, Guantanamo, and Manzanillo to prevent the entrance into and departure of vessels from said ports was well known to Captain Yeates, the master, and Don Jose R. Solis, the charterer, of said "Adula" prior to the departure of said vessel from Kingston, Jamaica, bound for said Cuban ports on the voyage in which she was seized.

(10.) That just prior to the departure of said "Adula" from Kingston, Jamaica, on June 28th, 1898, the United States consul refused the said Yeates and the said Solis permission to enter said ports of Santiago, Guantanamo, and Manzanillo because of the blockade of said ports, and notified them that said "Adula" could not enter said ports for any purpose.

(11.) That on June 28th, 1898, at 6 o'clock p. m., the said steamship "Adula" cleared from the port of Kingston, Jamaica, ostensibly bound, as shown by her papers, for the ports of Manzanillo, Santiago, and Guantanamo, Cuba, to take on passengers at these ports and with the purpose of entering one or other of said ports.

3 (12.) That the said Don Jose R. Solis, who was on said "Adula" at the time and entered on the crew list as supercargo, and said Yeates, master, then and there had upon their persons and otherwise in their personal custody a large number of letters, papers, of friendship and business, for correspondence and communication between citizens of Spain and others in the blockaded ports of Cuba and citizens of Spain and others in Jamaica and elsewhere outside of Cuba relating, among other things, to the present conduct and carrying on of commerce between the blockaded ports and the outside world; that said Yeates and Solis had the same in their possession on board said "Adula" with intent to carry on communication and promote trade and intercourse by means of the same between said people on the island of Cuba and those outside, as aforesaid.

(13.) Prior to the voyage on which she was seized, the "Adula," by permission of the United States consul at Kingston, Jamaica, sanctioned by the Secretary of the Navy of the United States, before she cleared from Kingston, Jamaica, had been permitted to make certain trips through the blockade at Cienfuegos to take out certain passengers; among others, certain American citizens there. On one of these permitted trips the "Adula" was boarded off Cienfuegos on May 9th, 1898, by an officer of the United States warship "Marblehead" and furnished with a copy of the proclamation of President McKinley, before mentioned, declaring Cienfuegos in a state of blockade. On the other permitted trips of the "Adula" into Cienfuegos the "Adula" was stopped — Cienfuegos on May 23rd, 1898,

by the United States cruiser "Brooklyn," and then allowed to go in and bring out passengers, as aforesaid.

(14.) On June 15th, 1898, the "Adula" cleared from Kingston, Jamaica, on a voyage to Cienfuegos, undertaking without permission of the United States authorities, and having evaded the American blockading fleet, entered Cienfuegos without permission from any United States warship, and there unloaded and delivered from said "Adula" a number of heavy packages, the contents of which are unknown to libellant. On the return voyage from Cienfuegos to Kingston the "Adula" took out, under an assumed name, a high Spanish official, to wit, the private secretary of General
4 Blanco, the Spanish governor general of Cuba. She was overhauled on June 19th by the U. S. S. "Yankee," but as she was flying the British flag she was allowed to proceed to Kingston with notice of the blockade of Cienfuegos and not to return again.

(15.) On June 27th, 1898, the "Adula," then at Kingston, was taking on a cargo for shipment, when, on the morning of June 28th, 1898, she discharged her cargo and took on coal, of which she had about three times the quantity necessary for her ostensible voyage. Mr. Solis, her charterer, then cabled Santiago, then in possession of Spain, for a Spanish pilot to meet the "Adula" at that port, and at 6 p. m. departed for Santiago, arriving off that port on June 29th, 1898, where, seeing the United States blockading squadron, the "Adula" did not go up to it, but changed her course for Guantanamo, at which latter place she arrived at about 5 p. m. June 29th, 1898, and the American warships lying well within the jaws of the bay, cut off from view by the headlands, the "Adula" had gotten within the three-mile limit of the shore and reached the mouth of the bay and within capturing distance of the American warships, one of which was moving out before the "Adula" discovered the danger of her position.

(16.) She was then ordered in to report to the American warships at anchor, and in consequences of the premises was seized by Commander McCalla as a good and lawful prize of war, as aforesaid, who placed Lieutenant Edwin A. Anderson, with a prize crew, aboard of said "Adula" and took possession of the papers and documents found aboard, and ordered her to Savannah, Georgia, for adjudication as a good and lawful prize.

(17.) That the said steamship "Adula" and cargo, with her captain, crew, and said charterer, have been brought into the port and harbor of Savannah, in the State of Georgia, where the same now are, within the jurisdiction of this court; and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

(18.) Wherefore the said United States, by said attorney, prays that all persons having or claiming any interest in said vessel or cargo may by the proper process of this court be duly notified of the allegations and prayer of this libel and cited to appear and claim the same; that the nature, amount, and value of said
5 cargo may be determined; and that, on proper proofs being

taken and heard and all due proceedings being had, the said vessel, the "Adula," together with her engines, boilers, tackle, apparel, furniture, and cargo, may on the final hearing of this cause, by the definitive sentence and decree of this court, be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

MARION ERWIN,
U. S. Attorney.
WILLIAM R. LEAKEN,
Ass't U. S. Attorney.

Order for Process.

SOUTHERN DISTRICT OF GEORGIA, *ss:*

Upon reading and filing the foregoing libel, it is ordered that attachment and monition do issue against the steamship "Adula," her engines, boilers, tackle, apparel, furniture, and cargo, returnable at the clerk's office of the district court of the United States for said district on Monday, August 1st, 1898, at 10 o'clock a. m.

Witness the Honorable Emory Speer, judge of said court, at Savannah, Ga., this July 21, 1898.

[SEAL.] H. H. KING, *Clerk.*

Endorsement: In United States district court, eastern division of the southern district of Georgia. The United States of America *versus* Steamship Adula, etc. Seizure. Libel. Filed in clerk's office July 21, 1898. H. H. King, clerk. Marion Erwin, U. S. attorney. W. R. Leaken, ass't U. S. att'y.

EASTERN DIVISION
Of the Southern District of Georgia, } *ss:*

The President of the United States of America to the marshal of the southern district of Georgia, Greeting:

[SEAL.] Whereas a libel hath been filed in the district court of the United States for the southern district of Georgia on the twenty-first day of July, in the year of our Lord one thousand eight hundred and ninety-eight, by the United States of America against the steamship "Adula," her tackle, apparel, etc., and cargo, in a cause of prize, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship "Adula," her tackle, apparel, etc., and cargo, may be cited in general and special to answer the premises, and, all proceedings being had, that the said steamship "Adula," her tackle, apparel, etc., and cargo, may for the causes in the said libel mentioned be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamship "Adula," her tackle, apparel, etc., and cargo, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear at the clerk's office of the district court of the United States for the southern district of Georgia, in the city of Savannah, on Monday, the first day of August next, A. D. 1898, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Emory Speer, judge of the said court, at the city of Savannah, in the southern district of Georgia, this twenty-first day of July, in the year of our Lord one thousand eight hundred and *eighty* ninety-eight, and of our Independence the one hundred and twenty-third.

H. H. KING, *Clerk.*

MARION ERWIN, *U. S. Attorney,*
WILLIAM R. LEAKEN, *Ass't U. S. Attorney,*
Proctors for Libellants.

7 *Marshal's Return on Attachment.*

OFFICE U. S. MARSHAL, EASTERN DIVISION,
SOUTHERN DISTRICT OF GEORGIA,
SAVANNAH, GA., *July* 21, 1898.

In obedience to the within writ, I did, *no* the 21st day of July, 1898, at Savannah, in my district, arrest the within-named steamer "Adula," her tackle, apparel, furniture, and cargo, and now have the same in my custody, at Savannah aforesaid, and I have duly cited all persons to appear, as I am within commanded.

JOHN M. BARNES,
U. S. Marshal,
By CHARLES J. WHITE, *Deputy.*

Endorsement: #205. United States district court, eastern division of the southern district of Georgia. In admiralty. The United States of America, libellant, *versus* The Steamship "Adula," etc. Attachment and monition *in rem.* Issued 21st day of July, 1898. Returned 22nd day of July, 1898. S. F. B. Gillespie, deputy clerk. M. Erwin, U. S. att'y; W. R. Leaken, ass't U. S. att'y, proctors for libellant.

8 *Claim of Owners.*

In the District Court of the United States, Southern District of Georgia, Eastern Division.

UNITED STATES OF AMERICA
vs.
STEAMSHIP "ADULA," HER ENGINES, BOILERS, APPAREL, AND FURNITURE.

And now comes the Atlas Steamship Company, Limited, and says that it is the owner of said steamship "Adula," her engines, boilers, tackle, apparel, furniture, and stores, and that it claims the same; and it further says that it is a corporation incorporated under the laws of the United Kingdom of Great Britain and Ireland, and having its principal office in the city of Liverpool, in said kingdom, and in the city of New York, in the United States of America, and that it is the true and *bona fide* owner of said steamship, and that no other person is the owner thereof.

And it further shows that said ship has no cargo on board, and that what is described in the libel as cargo is in fact coal forming part of the stores of said ship; that the British registry of said ship is now in the possession of this honorable court, as it is informed and believes, and it prays reference to the same.

And it further says that the said ship, her engines, boilers, tackle, apparel and furniture, and said stores, at the time of shipment and capture did belong to the person hereinabove named and referred to, and that the same, if restored, will belong to the same person and none other, and it prays the restitution thereof.

ATLAS STEAMSHIP COMPANY, LIMITED,
By ROB'T W. YEATS, *Master S. S. "Adula."*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Divis'n.

Robert William Yates, being duly sworn, deposes and says that I am the master of the steamship "Adula" mentioned in the foregoing claim, and as such am the lawful bailee of the said ship, her tackle, apparel, machinery, and furniture, and of the coal mentioned in said claim, which formed a part of the stores of said ship and was not cargo. I have read the foregoing claim and know the contents thereof, and the same is true. The reason why this affidavit is made by me is that the claimant is a corporation; that
9 none of the directors or officers thereof are in the district of Georgia.

R. W. YEATS.

Sworn to and subscribed before me this 26th day of July, 1898.

S. F. B. GILLESPIE,
Deputy Clerk, U. S. District Court, So. Dist. Ga.

Endorsement: In the district court of the United States, southern district of Georgia, eastern division. United States of America *vs.* Steamship "Adula," her engines, boilers, tackle, etc. Claim of owners. Filed July 26, 1898. S. F. B. Gillespie, deputy clerk. Everett P. Wheeler, Garrard, Meldrim & Newman, proctors for claimant.

10 *Stipulation for Claimant's Costs.*

United States District Court, Southern District of Georgia, Eastern Division.

UNITED STATES OF AMERICA
versus
STEAMSHIP "ADULA," HER ENGINES, BOILERS, Tackle, Apparel, etc. } In Admiralty.

Libel *in rem.* Seizure.

District Court of the United States for the Southern District of Georgia.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the twenty-first day of July, in the year of our Lord one thousand eight hundred and ninety-eight, by the United States of America against the Steamship "Adula," her engines, boilers, her tackle, apparel and furniture, and cargo, for the reasons and causes in said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellant;

And whereas, also, a claim has been filed in said cause by the Atlas Steamship Company, Limited, and the said claimant, and the Fidelity & Deposit Company of Maryland, surety, the parties hereto hereby consenting that in case of default or contumacy on the part of the claimant or their surety execution for the sum of two hundred and fifty dollars *dollars* may issue against their goods, chattels, and land:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulator undersigned shall be and hereby — bound in the sum of two hundred & fifty dollars *dollars*, condition- that the claimant above named shall pay all costs and expenses which shall be awarded against *them* by the final decree of this court or upon an appeal by the appellate court.

THE ATLAS STEAMSHIP COMPANY, LIMITED,
By E. P. WHEELER, *Attorney.*
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By J. A. G. CARSON, *Their Attorney-in-fact.*

Attest: JOHN R. COWAN,
For Resident Manager.

[Seal & Int. Rev. Stamp.]

Taken and acknowledged this 27th day of July, 1898, before me—
S. F. B. GILLESPIE,
Deputy Clerk.

Filed July 27, 1898.

S. F. B. GILLESPIE,
Deputy Clerk.

11 *Petition of the Atlas Steamship Company, Limited.*

To the Honorable Emory Speer, judge of the district court of the United States for the southern district of Georgia:

The petition of the Atlas Steamship Company, Limited, respectfully showeth:

First. Your petitioner is a corporation incorporated under the laws of the United Kingdom of Great Britain and Ireland, and is and has been for many years engaged in the business of transporting passengers, mails, and cargo between the city of New York and various ports in the island of Jamaica and in Central and South America.

Second. Your petitioner is the owner of the steamship "Adula," which, as your petitioner is informed and believes, was on or about the first day of July, 1898, seized by the naval forces of the United States of America off the port of Guantanamo, in the island of Cuba, for an alleged infraction of the blockade claimed to be then existing at said port.

Third. Your petitioner on several occasions prior to said date had, with the full consent and approval of the Government of the United States, transported divers refugees, many of whom were American citizens, and others were citizens and subjects of her majesty the Queen of the United Kingdom aforesaid, and were exposed in the island of Cuba to great danger to their lives from the war now being waged on that island, and were also exposed to great suffering and privation from the difficulty in obtaining shelter and food, and were indeed in imminent danger of starvation.

At the time of the charter-party hereinafter mentioned your petitioner had no knowledge or information that the policy of the Government of the United States respecting the transportation of refugees from the island of Cuba to the island of Jamaica had been in any respect changed, and relying upon the fact that your petitioner had been engaged on several occasions, as aforesaid, in the said business, it did, on or about the — day of June, 1898, make a charter-party with one Jose R. Solis, who was the French consular agent in Manzanillo, which charter-party was entered upon
12 by your petitioner in entire good faith and in the full belief that its sole object and purpose was to transport other refugees from said island of Cuba solely for the purpose of saving them from danger to their lives and bringing them to a place of shelter. A copy of said charter-party is annexed hereto and marked Exhibit "A."

Your petitioner has no knowledge, information, or belief of any

other object on the part of said Solis than the transportation of refugees from the island of Cuba to the island of Jamaica, and does not *not* know that there was any other object, and it was expressly agreed between him and your petitioner that no attempt should be made to enter any of the three ports in the island of Cuba to which it was proposed to send the said Adula without the full consent of the authorities of the United States stationed off the said ports.

The said ports of Guantanamo, Santiago, and Manzanillo were not included in the original proclamation by the President of the United States in reference to a blockade of certain portions of the coast of the island of Cuba, and, so far as your petitioner is aware, no proclamation that said ports were blockaded was made until the 6th day of July, 1898. The port of Guantanamo has been in full possession of the military and naval forces of the United States for about a month, and the principal part of the province of the island of Cuba, in which said ports are situated, has been for more than two years in the possession of and governed by the insurgents in said island, with whom the United States is now co-operating.

Fourth. At the time of making the said charter-party your petitioner was informed and verily believes that neutral vessels on peaceful errands had been allowed by the authorities of the United States to enter and depart from all the said ports, and it did not believe that any obstacle would be offered by the said authorities to the said steamship Adula, mentioned in said charter-party, entering the said ports; but nevertheless, in order to guard against all possible difficulty on that score, the captain of the said Adula received instructions from your petitioner not to make any attempt whatever to enter the said ports until he had communicated with the authorities of the United States having jurisdiction and control over that portion of the island of Cuba in which said ports are situated
13 and over the sea adjoining, as will more fully appear from the instructions given by your petitioner to the captain of the said steamship Adula, a copy of which is also hereto annexed, marked Ex. "B."

Fifth. The said steamship Adula has a peculiar and intrinsic value to your petitioner, independent of the market value of said steamer. In the ordinary course of your petitioner's business, it despatches a steamer from New York every Saturday for Kingston, Jamaica. These steamers carry United States mails, passengers, and cargo, and the steamship Adula ordinarily runs in connection with said steamers upon their arrival in Kingston, and transports passengers, mails, and cargo from Kingston to the outports of Jamaica. Many of these ports have no communication with Kingston excepting by water. The only line of steam railway in said island is a very short one, running from Kingston to the interior, and reaching only one point on the coast. The island is mountainous. There is no regular communication by roads and it is of great importance to the welfare, comfort, and convenience of the inhabitants of said island that the communication between Kingston and the inhabitants of said island should be maintained by sea.

Sixth. Your petitioner has been engaged in the business of trans-

porting passengers, mails, and cargo from Kingston to said outports for many years, and it would be prejudiced by any serious interruption thereof to a much greater amount than the value of said steamer Adula.

Seventh. Your petitioner has no other steamer which can be engaged in that business, and could not procure another suitable steamer for that purpose without great delay. The steamers plying between New York and Kingston and South America are too large for the trade, and of a draft deeper than would allow them to enter many of the harbors on the coast of Jamaica, and your petitioner would not have allowed its said business to be interfered with, even for a few days, by the temporary absence of the said Adula on a voyage to Cuba, except for the representations that the conditions of the peaceful citizens of the island was so deplorable that in the cause of humanity it was imperative to remove as soon as possible as many of them as were able and desirous to go.

14 Eighth. The rights and interests of the United States and of the captors will not be prejudiced by the delivery to your petitioners of the said steamship Adula.

Wherefore your petitioner prays that the court would authorize the delivery of the said steamship Adula to your petitioner on the filing of a stipulation for the value of said steamer, with satisfactory security, and that your petitioner may have such other and further relief as may be just.

New York, July 16, 1898.

THE ATLAS STEAMSHIP ——, LIMITED,
By R. GEMMELL, *Att'y.*

EVERETT P. WHEELER,
P. W. MELDRIM, *Advocates.*

CITY AND COUNTY OF NEW YORK, *ss:*

Robert Gemmell, being duly sworn, deposes and says: I am the resident agent in the city of New York of The Atlas Steamship Company, Limited, the petitioner herein; I have read the foregoing petition and know the contents thereof, and the same is true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

R. GEMMELL.

Sworn to before me this 16th day of July, 1898.

HARRY M. HEWITT,
[SEAL OF NOTARY.] *Notary Public*, 190, *N. Y. Co.*

15 EXHIBIT "A."

It is hereby mutually agreed between the Atlas Steamship Company, Limited, hereinafter called the "company," and Mr. Jose R. Solis, hereinafter called the charterer, as follows:

That the company put at the disposal of the charterer the steamer

"Adula" for the conveyance of passengers from Cuban ports hereinafter to be named to Kingston. The ports that the vessel is to go to are Manzanillo, Santiago and Guantanamo; but it is distinctly understood and agreed by the parties aforesaid that it shall not be deemed a breach of this agreement should the steamer be prevented from entering any of those ports from causes beyond the control of the company, but that, should she be able to enter one or all of them, she shall embark the passengers that the charterer shall engage for her and proceed on her voyage. If she is not permitted to enter either Manzanillo, Santiago or Guantanamo the vessel is to return to Kingston and the voyage shall be considered completed, and the charter money hereinafter referred to earned without any deductions. The company reserves the right to refuse to take any passengers that in the captain's opinion is in such a state of health as may seriously interfere with the obtaining of pratique at Port Royal. The passengers are to be provided with such accom-odation as the ship can offer at this moment, and are to be provided with victualling at the company's usual scale of charges, the victualling to be paid by the passengers.

The port charges are payable by the charterers, and the charterer is to provide a good and efficient government pilot to conduct the ship safely into the ports which have been named. Should she be permitted to enter them, the charterer guarantees that the proper and efficient clearances shall be obtained for each port, so that the ship shall not be subjected to any fines for breach of regulations.

For these services the charterer shall pay the company for the hire of the vessel one hundred pounds per day or part of a day for the first ten days of the voyage. After the expiration of the first ten days, the charter money shall be at the rate of fifty pounds per day or part of a day, and it is agreed that the charter money
16 shall count from the time the ship leaves the wharf at Kingston until she returns to the wharf at Kingston. A minimum payment, however, is agreed to be five hundred pounds.

On the signing of this agreement the charterer shall pay to the company the sum of one thousand pounds as a deposit for the payment of the charter money. The company herewith give their undertaking to the charterer that should the charter money be less than the amount of the deposit that they will refund to the charterer the balance on demand, it being always understood that a minimum payment of £500 is payable by the charterer.

It is understood that the company shall provide all coals, stores and crew's wages.

Should the vessel be stopped for repairs to machinery or through being stranded, the time she is stopped, and, or aground shall not be counted as time under the attached agreement.

The company will provide the charterer with a boat and crew for the purpose of entering any of the ports named in the agreement attached.

The company will give the option to the charterer for another similar voyage on similar terms, providing the charterer gives the company twenty-four hours' notice after arrival of the steamer at

Kingston, the voyage to commence, if the ship is ready, twelve hours after the expiration of the twenty-four hours.

Signed in triplicate, this twenty-eighth day of June, one thousand eight hundred and ninety-eight by the parties aforesaid.

For the Atlas S. S. Co., L't'd:

(S'g'd) W. PEPLOE FORWOOD.
(S'g'd) JOSE R. SOLIS, *Charterer.*

17 EXHIBIT "B."

Dictated by Capt. Forwood.

ATLAS STEAMSHIP COMPANY, JAMAICA AGENCY,
June 28, 1898.

Captain Yeates, S. S. "Adula."

DEAR SIR: I enclose herein a copy of the agreement under which your vessel is proceeding on, and on board the ship will be the charterer, to whom I now introduce you, Mr. Jose R. Solis, and I ask you to show him every attention on the voyage.

You will see by a perusal of the agreement that you are on a voyage wholly and solely for the conveyance of refugees from the ports named to Kingston.

On your arrival at Guantanamo, to which port you will proceed direct, you will find, no doubt, American warships off the port. You will, when signalled to, stop immediately and communicate to the commanding officer the voyage that you are on, and, in fact, you can show him these sailing orders, and I do not think that the commanding officer will make any trouble whatever to your continuing the voyage into the port.

You must be careful on your arrival there not to interfere or in any way make any observation or sketches or anything that you may see or hear of, but adhere strictly to the duties of your ship.

At Guantanamo it is likely there may be some difficulty in obtaining a pilot, and if the commanding officer gives you permission to proceed it is just possible that he may be able to tell you where you can obtain the services of a pilot to go in.

From Guantanamo you will proceed to off Santiago. Here you will meet the other fleet, and carry the same instructions out with them as I have mentioned to you in reference to Guantanamo. The charterer is telegraphing at once to Santiago for a pilot to come off to meet the ship, if permission is granted, to pilot your ship into the port.

From Santiago you will proceed to Manzanillo, and from thence back to Kingston. The charterer, Mr. Solis, may order you direct from Guantanamo to Kingston or from Santiago to King-
18 ston, and in such a case you will follow out his orders, which he will give you in writing. He has the option of going to the three ports, but it may be convenient for him to go to only one or even two. The boat's crew that is mentioned in the appendix of this agreement you will provide, but it will be necessary for you to have the ensign in the stern, so as to show your nationality.

You will not allow any provisions of any sort to leave your ship at any of the ports or to do anything that is contrary to the laws of the country or that may be interpreted as a breach of faith in being allowed to pass the blockade and enter the ports, and I must ask you not to permit any of your crew to land at any of the ports, and only yourself, if necessary, to visit the British consul.

Wishing you a pleasant voyage, I am, sir,

Yours faithfully,

(S'g'd) W. PEPLOE FORWOOD,
Gen. Ag't, Jca.

Endorsement: In the matter of the seizure of the steamship "Adula," &c. Petition of the Atlas Steamship Company, Limited. Filed in clerk's office July 26, 1898. H. H. King, clerk. Everett P. Wheeler, P. W. Meldrim, advocates. Garrard, Meldrim & Newman, proctors for claimant.

Acknowledgment of Service.

Service of a copy of the within petition acknowledged this July 26th, 1898.

MARION ERWIN,
U. S. Attorney.

19 *Order to File Answer on July 28th, 1898.*

In United States District Court, Eastern Division, Southern District of Georgia.

UNITED STATES
vs.
STEAMSHIP "ADULA," &C. } Libel *in Rem.* Prize.

It is agreed between the parties, by their respective proctors of record, that the hearing on the evidence taken in preparation and on the papers, documents, &c., sent up by the prize commissioners in the above-stated cause and on claimant's petition, proceed today before the court, the claimant to file answer to the libel by 10 o'clock a. m. tomorrow.

MARION ERWIN,
U. S. Attorney.
WILLIAM R. LEAKEN,
Ass't U. S. Attorney.
E. P. WHEELER,
P. W. MELDRIM,
Proctors for Claimant.

In open court, July 27, 1898.
Approved.

EMORY SPEER, *Judge.*

Filed in clerk's office July 27, 1898.

S. F. B. GILLESPIE,
Deputy Clerk.

20 *Answer of the Atlas Steamship Company.*

In the District Court of the United States, Southern District of Georgia, Eastern Division.

UNITED STATES OF AMERICA
vs.
STEAMSHIP "ADULA," HER ENGINES, BOILERS, TACKLE, APPAREL, and Furniture, &c.

The answer of the Atlas Steamship Company (Limited), by Garrard, Meldrim & Newman, proctors for the said company, claimant of the steamship "Adula," her engines, boilers, tackle, apparel, furniture, and coal.

The said claimant answers the libel as follows upon its information and believe:

1. It denies that the said steamship "Adula" at the time of her last voyage, terminating with her seizure, or at any time was under the control or direction of one Jose R. Solis, and upon information and belief it denies that he was a loyal subject of her majesty the Queen Regent of Spain.

2. It denies upon information and belief the allegations of the fourth article of the libel.

3. It denies that an actual and effective blockade of the port of Santiago was established, as alleged in the fifth article of the libel.

4. It denies that on or about the 8th day of June, 1898, or at any time an actual or effective blockade of the port or the bay of Guantanamo, Cuba, was established by Commander McCalla, of the Marblehead, with that ship or any other ships.

5. It denies that the blockades of the port alleged in the seventh article of the libel or either of them from the time of their establishment were actual, effective, or continuous to the time of the capture of the "Adula," as aforesaid, or that the fact of such blockade was public or notorious throughout the civilized world, or that the same was well known at Kingston, Jamaica.

6. It has no knowledge or information sufficient to form a belief as to whether on June 27th, 1898, the President of the United States made the proclamation alleges in the eighth article of the libel, and it denies that this proclamation was well known or notorious at Kingston, Jamaica, on the morning of June 28th, 1898, and
21 avers on information and belief that the same was not known to this claimant until on or about July 6th, 1898.

7. It denies each and every one of the allegations in the ninth article of the libel.

8. It denies each and every one of the allegations in the tenth article of the libel.

9. It denies that the said steamship "Adula" cleared from the port of Kingston, Jamaica, or otherwise for the purpose of entering the port either of Manzanillo, Santiago, or Guantanamo, Cuba, un-

less it could receive from the authorities of the United States having control of the said ports or the waters adjacent thereto express permission to enter any one of said ports and take away refugees and non-combatants therefrom.

10. It denies each and every one of the allegations in the twelfth article of the said libel.

11. It has no knowledge or information sufficient to form a belief as to whether on any of the permitted trips alleged in the thirteenth article of the libel the "Adula" was furnished with a copy of the proclamation of President McKinley therein alleged.

12. It denies that the said steamship "Adula" evaded the American fleet on the voyage to Cienfuegos mentioned in the fourteenth article of the libel, and it denies that the said voyage was without permission of the United States authorities, and it denies each of the allegations in the fourteenth article of the libel respecting the person taken out by the said steamer on the return voyage from Cienfuegos to Kingston as therein alleged.

13. It denies that on the morning of June 28th, 1898, the Adula took on coal to about three time- the quantity necessary for her voyage, and alleges that the coal taken on board by her was no more than was necessary and reasonable for her voyage and for a subsequent trip in her usual business along the coast of Jamaica, and that owing to the said steamer having no cargo on board the said coal was required for the purposes of ballast and trim. It denies on information and belief that the charterer, Solis, cabled Santiago for a Spanish pilot to meet the "Adula" at that port. It denies the allegation in the fifteenth article of the libel that the said
22 steamship departed for Santiago or arrived off that port on the 29th of June, or that she on that day changed her course for Guantanamo, except as hereinafter admitted.

14. It admits the seizure mentioned in the sixteenth article of the libel, but denies that said seizure was in consequence of the premises alleged in the libel, or that it was a good or lawful one, or that said steamship "Adula" was a good or lawful prize of war.

15. It denies that said vessel and the coal on board, erroneously described in the libel as cargo, are lawful prize of war or subject to be condemned or forfeited to the United States as such.

16. And this claimant further says and shows to the court as follows: That the war mentioned in the third article of the libel was begun and has been prosecuted for the purpose of compelling the government of Spain to relinquish its authority and government in the island of Cuba and withdraw its land and naval forces in Cuba and Cuban waters, and that by the act of Congress declaring such war it was declared that the people of the island of Cuba are and of right ought to be free and independent, and said war has not been waged against them; that the said Solis mentioned in the libel was a native-born Cuban and had taken no part in the hostilities between the government of Spain and the United States of America; that prior to the said declaration of war it was well known in the United States and in Jamaica and to this claimant and is fully stated in divers messages of the President of the United States and

other public documents that great numbers of innocent persons in the island of Cuba were in great suffering and distress by reason of the hostilities that were being waged in said island between the people of said island, who were endeavoring to liberate themselves from the rule of the government of Spain, and the soldiers, who were acting under the authority of the said Spanish government, and, in point of fact, many of said persons were exposed to suffering and privation from difficulty in obtaining shelter and food and were in imminent danger of starvation; that in divers public messages and documents as aforesaid the Government of the United States had declared its intention to relieve the sufferings of said persons and to supply them with food or to permit the same to be done.

23 That acting upon the determination so expressed, and both before and after the said declaration of war, the said Government of the United States encouraged divers attempts that were made to relieve such sufferings, and that the voyages of the "Adula" mentioned in the thirteenth and fourteenth articles of the libel were wholly undertaken and completed in aid of said purpose; that the United States Government encouraged the removal from the island of Cuba of refugees and persons not engaged in warfare; that no information of any sort that the policy of the Government of the United States in that particular had been changed, if it was ever changed, was communicated in any way to this claimant; that when the application to charter the "Adula," in the latter part of June, 1898, was made to this claimant by Jose R. Solis, mentioned in the libel, the application was made solely for the conveyance of passengers from Manzanillo, Santiago, and Guantanamo to Kingston, Jamaica. At that time this claimant was informed and verily believed that neutral vessels on peaceful errands had been allowed by the authorities of the United States to enter and depart from all of said ports, and it did in good faith believe that no obstacle would be offered by said authorities to the said steamship "Adula" entering the said ports to remove refugees and non-combatants therefrom, and it was fully expected and believed by this claimant and the public generally that in the prosecution of hostilities between the United States and Spain a bombardment of the city of Santiago was imminent, and that, in accordance with the laws of war, the general commanding the United States Army in the vicinity of Santiago would authorize non-combatants to depart therefrom; all of which on or about the first of July actually happened, and this claimant did in good faith believe that the Government of the United States would prefer the removal of said refugees and non-combatants from the vicinity of Santiago, and this claimant never had the slightest intention to break any blockade that might be established in form or in fact at any of said ports.

Wherefore it did on or about the 28th day of June, 1898, make a charter-party with said Jose R. Solis, which charter-party was entered upon by your petitioner in good faith and in the full belief that its sole object and purpose was to transport other refugees

24 from said island of Cuba solely for the purpose of saving them from danger to their lives and bringing them to a place

of shelter; to which said charter-party it craves to refer. Your claimant had no knowledge, information, or belief of any other object on the part of said Solis than the transportation of refugees from the island of Cuba to the island of Jamaica, and does not now know that there was any other object, and it was expressly agreed between him and this claimant that no attempt should be made to enter any of the three ports in the island of Cuba to which it was proposed to send the "Adula" without the full consent of the authorities of the United States stationed off the said ports. The said ports of Guantanamo, Santiago, and Manzanillo were not included in the original proclamation by the President of the United States in reference to a blockade of certain portions of the coast of the island of Cuba. The principal part of the province of the island of Cuba, in which said ports are situated, has been for more than two years in the possession and governed by the insurgents in said island, with whom the United States Government is now and has been co-operating.

It was further expressly agreed between the said Solis and this claimant that no attempt should be made to enter any of the said ports until after permission to do so should first be obtained from the commanding officer of any American warships off any of said ports, and specific instructions were given by this claimant to the captain of said steamer not to make any attempt to enter any of said ports without such permission, and he was further instructed not to allow any provisions of any sort to leave the ship at any of the said ports, as by said instructions, reference being had thereto, will more fully appear.

The armed forces of the United States, in pursuance of the declaration of war aforesaid and for the purposes therein expressed, did, on or about the 10th day of June, 1898, as your petitioner is informed and believes, take possession of the port and harbor of Guantanamo, and have held possession of the same ever since. The city of Guantanamo, as your petitioner is informed and believes, is not on said harbor, but is about 18 miles inland, on a shallow river, not accessible by seagoing vessels and not accessible by the said steamship "Adula," and it never was her intention to go to said city, but solely, so far as said city is concerned, to take away any refugees who might have been notified by the American forces to leave said city or who might have been permitted by such forces to leave the same or its neighborhood, and whose departure from the island of Cuba would be permitted by the said forces of the United States, as they had previously permitted other refugees to depart.

In accordance with the said instructions and solely for the purposes aforesaid, the said "Adula" did, on the 28th day of June, 1898, sail from Kingston for the bay of Guantanamo, then, as aforesaid, in the full and undisturbed possession of the forces of the United States, and was seeking permission to enter the same when she was seized by the "Marblehead." Before approaching the said bay she had been hailed by an armed vessel of the United States, known as the "Vixen," and had informed the commanding officer of said "Vixen" that she was bound for Guantanamo and was told by him

to proceed. If the commanding officer of the said "Vixen," or any other officer of the Navy of the United States, had informed the captain of the said "Adula" that permission to enter the said bay of Guantanamo was refused, the said captain, in accordance with his instructions, would have departed therefrom and would have made no attempt to enter the same, but was engaged at the time of the capture solely in the endeavor to meet the commanding officer off or in said bay and request from him permission to enter the same and whistled for a pilot, and she went about the approach to the American fleet openly and publicly and without the least attempt at concealment or disguise.

17. That this claimant and the officers and crew of said steamship have suffered great loss and damage by reason of the unlawful seizure and detention of the said steamship; that she ought to have been sent in promptly for adjudication, whereas she was without cause detained off Guantanamo for about twenty days before she was sent in for adjudication.

Wherefore this claimant, on behalf of itself and the said officers and crew, prays that this honorable court would decree that
26 the said seizure and detention were unlawful, and that the said steamship and other property so seized be restored to it, and that the captors and libellants pay to this claimant and to the said officers and crew of said steamship the damages which they have severally sustained by reason thereof, and the said claimant prays that its reasonable costs and damages in this behalf sustained may be adjudged to it.

GARRARD, MELDRIM & NEWMAN,
Proctors for Claimant.

EVERETT P. WHEELER,
P. W. MELDRIM, *Advocates.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division.

Wright Hunter, being duly sworn, deposes and says that he is an agent in the said district for the Atlas Steamship Company, Limited, the claimant herein, and that the foregoing answer is true to his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes the same to be true; that the reason this affidavit is not made by one of the officers of said claimant is that said claimant is a corporation, and that none of said officers are now in the district aforesaid.

WRIGHT HUNTER.

Sworn to and subscribed before me this 27th day of July, 1898.

[SEAL OF NOTARY.] *Notary Public, Chatham Co., Ga.*

Endorsement: In the U. S. district court, southern district of Georgia, eastern division. United States of America *versus* Steam-

ship "Adula," her engines, boilers, tackle, etc. Answer. Filed in office July 27, 1898. S. F. B. Gillespie, deputy clerk. Garrard, Meldrim & Newman, proctors for claimant.

27 *Motion to Take Further Proof and Rule Nisi.*

JULY 28, 1898.

And now comes the Atlas Steamship Company (Limited), by its proctors aforesaid, and moves the court to order further proof and permit it to take further proof in explanation of and respecting the various matters alleged in the libel regarding the last voyage to Cienfuegos and to Guantanamo, concerning which it is claimed by the attorney for the libellant that the evidence shows cause for condemning the said steamship, her engines, &c., as prize of war, and also respecting the ownership of said steamship, and after hearing counsel for the parties, it is—

Ordered that the hearing of said motion be set down for the 9th day of August, at 4 p. m., 1898, at Mount Airy, in the State of Georgia, and that the claimant have leave to serve such affidavits and other papers it may desire to read upon said motion on or before August 5, 1898, and that the entry of the decree herein be without prejudice to said motion.

EMORY SPEER, *Judge.*

July 28, 1898.

Service of a copy of the above rule *nisi* is hereby acknowledged.

MARION ERWIN,
U. S. Attorney.

July 28, 1898.

Endorsement: In the United States district court, southern district of Georgia, eastern division. United States of America *vs.* Steamship "Adula," her engines, boilers, &c. Rule *nisi*. Filed in office July 28, 1898. S. F. B. Gillespie, deputy clerk.

28 *Report of Prize Commissioners.*

In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

THE UNITED STATES
vs.
STEAMSHIP "ADULA." } Prize Cause.

To the Honorable Emory Speer, district judge, presiding in said cause:

The undersigned prize commissioners, appointed by this honorable court, beg leave to report that they have duly transmitted to the clerk of said court, securely sealed and properly labeled, all papers of every kind delivered to them by Lieutenant E. A. Anderson, prize master of the "Adula," as having been seized on said ship

or from the persons on board said ship, such papers being in one large package marked "Package No. 1," and being described in the affidavits of said prize master hereinafter described.

In another package, likewise sealed and labelled, and which said package is marked "Package No. 2," are contained all depositions, affidavits, inventories, claims for prize money, and papers of every character which have been prepared by us or under our direction, or which have been handed to us in connection with this cause.

The papers contained in package No. 2 are as follows:

1. Affidavit of Lieutenant Edwin A. Anderson (marked "Affidavit No. 1").

2. Affidavit of Lieutenant Edwin A. Anderson (marked "Affidavit No. 2").

3. Inventory of the papers of the steamship "Adula;" this inventory is attached as an exhibit to affidavit No. 1, made by Lieutenant Anderson.

4. The interrogatories of the following seven witnesses, who were on the "Adula" when captured, to wit, Robert William Yeates, master of the "Adula" (paper marked No. 4); Jose R. Solis, supercargo (paper marked No. 4*a*); James Clarkson, acting chief officer (paper marked No. 4*b*); David Hamilton, quartermaster (paper marked No. 4*c*); John Darling, quartermaster (paper marked No. — *d*); James C. Williamson, purser (paper marked No. 4*e*), and Horatio Morris, sailor (paper marked No. 4*f*).

5. Interrogatories of the following three members of the prize crew, to wit, Lieutenant Edwin A. Anderson, William Ellenberg, and Freeman Gill (said interrogatories being numbered respectively 5, 5*a*, and 5*b*).

6. Written consent for the taking of the interrogatories of the three foregoing witnesses (this paper being marked No. 6 and being attached to the interrogatories of William Ellenberg and Freeman Gill).

29 7. Oath administered to George T. Cann and Manning White as stenographers.

8. List of officers and crew U. S. S. Marblehead.

9. Letters from B. H. McCalla, addressed to the judge of the United States prize court, with copies of four letters addressed by him to the commander-in-chief North Atlantic station.

10. Claim for prize money made by U. S. S. "Solace."

11. Claim for prize money made by U. S. T. B. "Rodgers;" no list of officers or crew attached.

This inventory of the papers in the package No. 1 is correct, same having been made jointly by the prize master and the commissioners.

No cargo was found on board the "Adula." There is now on the ship something like 12 or 16 tons of coal.

This report and inventory is placed by us in package No. 2, along with the papers herein described, and we have no papers of any kind whatsoever in our hands now relating to the steamship "Adula," all having been delivered to the clerk of the United States court at Savannah, as provided by law.

Since preparing the foregoing report we have backed each paper so as to dispense with the necessity of marks.

Respectfully submitted.

A. E. K. BENHAM,
Rear Admiral U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

Endorsement: District court of U. S., eastern division, southern district of Georgia. United States *vs.* Steamship "Adula." Report of prize commissioners. Taken from sealed package from prize commissioners, opened by the court, and now, this July 27th, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

30 *Order for Bonding and Appointing Appraisers.*

In the United States District Court, Southern District of Georgia, Eastern Division.

UNITED STATES OF AMERICA
vs.
STEAMSHIP ADULA, HER ENGINES, BOILERS, TACKLE, APPAREL, Furniture, etc.

At a stated term of the district court of the United States for the southern district of Georgia, eastern division, held at the court-house, in the city of Savannah, on the 28th day of July, A. D. 1898.

Present: Honorable Emory Speer, district judge.

The claimant, The Atlas Steamship Company, Limited, having filed its claim in this cause to the steamship "Adula," her engines, boilers, tackle, apparel, furniture, &c., and having also filed a petition in pursuance of section # 4626 of the Revised Statutes of the United States, praying that the court would authorize and direct the delivery of said steamship "Adula," her engines, boilers, &c., to your petitioner on the filing of stipulation for the value of said steamer, with satisfactory security, and it appearing to the court that the said property has a peculiar and intrinsic value to the claimant independent of its market value, and that the rights and interests of the United States and the captors will not be prejudiced thereby: Now, on motion of Messrs. Garrard, Meldrim & Newman, proctors for the petitioner, and after hearing counsel for the respective parties—

It is ordered that the said steamship "Adula," her engines, boilers, tackle, apparel, furniture, and stores, including the coal remaining on board said steamship, be, and the same are hereby, directed to be delivered by the libellants and by the marshal of the United States to said claimant upon the said claimant filing with the clerk of this court its stipulation for the value of the said property, which is to be fixed as hereinafter provided, and the Fidelity and Deposit Com-

pany of Maryland, a corporation incorporated under the laws of Maryland, is hereby accepted as surety upon said stipulation, and the said stipulation shall stand in lieu of said property and shall be subject in all respects to the orders of this court hereafter to be made to the same extent as the said property would have been had it remained in the custody of the marshal of the United States.

31 And it is further ordered that the captain, officers, and crew of the said steamship be relieved from detention for the purposes of navigating said steamship to the port of Kingston, in the island of Jamaica, and that their personal property, exclusive of any letters or papers which may have been found in their possession, be restored to them respectively.

And it is further ordered that the value of said steamship, her engines, boilers, tackle, apparel, furniture, and coal, be appraised by John Screven, John M. Egan, and Clarence S. Connerat, who are hereby appointed appraisers for that purpose; that they proceed with all diligence to make said appraisement and shall certify the same in writing to the clerk of this court; that the amount of the stipulation aforesaid shall be the amount of such valuation, and that if the claimant within three days after the filing of said appraisement and notice thereof to the proctors for claimant shall fail to execute and deliver to the clerk of this court a stipulation, as aforesaid, then the said steamship "Adula," her engines, boilers, tackle, apparel, and coal, shall forthwith be sold at public auction in the city of Savannah or in such other place and on such other terms as the court may hereafter order.

Provide-, however, that if the proctors for the respective parties shall file an agreement in writing as to the value of said property before such appraisement is made it shall be received in lieu of such appraisement.

In open court, July 28, 1898.

EMORY SPEER, *Judge.*

Endorsement: In the United States district court, southern district of Georgia. United States *vs.* Steamship "Adula," her engines, boilers, etc. Order for bonding and appointing appraisers. Filed in office July 28, 1898. S. F. B. Gillespie, deputy clerk.

Marshal's Return.

Office of U. S. marshal, eastern division, southern district of Georgia.

SAVANNAH, GA., *July* 30, 1898.

I hereby certify that on this 30th day of July, 1898, at Savannah, Ga., in my district, I personally served the within order on John Screven, John M. Egan, and Clarence S. Connerat by showing to each the same, with the signature of the judge thereon, and at the same time delivering to each a copy thereof.

JOHN M. BARNES,
U. S. Marshal,
By CHARLES J. WHITE, *Deputy.*

32 *Report of Appraisers.*

In the District Court of the United States, Southern District of Georgia, Eastern Division.

UNITED STATES OF AMERICA
vs.
STEAMSHIP "ADULA," HER ENGINES, BOILERS, ETC.

To the Honorable Emory Speer, judge of the district court:

The undersigned, appointed appraisers in this cause to appraise the value of the steamship "Adula," her engines, boilers, tackle, apparel, furniture, and coal, do hereby certify that they have this thirtieth day of July, 1898, diligently examined said steamship "Adula," her engines, boilers, tackle, apparel, furniture, and coal, and that to the best of their judgment and belief the value of same, exclusive of the coal, amounts to the sum of eighty thousand ($80,000) dollars; the coal, being about eighteen tons, is of the value of fifty-four ($54.00) dollars.

Given under our hands, at Savannah, Georgia, this thirtieth day of July, 1898.

JOHN SCREVEN.
JOHN M. EGAN.
CLARENCE S. CONNERAT.

Oath of Appraisers.

THE UNITED STATES
vs.
STEAMSHIP "ADULA," ETC. } Libel *in Rem.* Prize.

Before the undersigned personally come John Screven, John M. Egan, and Clarence S. Connerat, who, being duly sworn, each for himself deposes and says that, having been appointed appraisers to appraise *to* steamship "Adula," her engines, boilers, tackle, apparel, furniture, and stores, including the coal remaining on board said steamship, they and each for themselves solemnly swear to faithfully execute and discharge the trust to which they are appointed, as aforesaid.

JOHN SCREVEN.
JOHN M. EGAN.
CLARENCE S. CONNERAT.

Sworn to and subscribed before me this 30th day of July, 1898.

S. F. B. GILLESPIE,
Deputy Clerk.

Endorsement: United States *vs.* Steamship "Adula," etc. Oath of appraisers and report of appraisers. Filed July 30, 1898. S. F. B. Gillespie, deputy clerk.

33 *Decree of Condemnation.*

In U. S. District Court, Eastern Division, Southern District of Georgia.

THE UNITED STATES OF AMERICA
vs.
THE STEAMSHIP "ADULA," ETC.

The above-stated cause came on to be heard before the court upon the pleadings and upon the documents, papers, &c., and testimony taken *in preparatorio* before the prize commissioners and sent up to the court in conformity with the law and practice in such case and was argued by proctors for libellant and proctors for claimant; whereupon it is considered, ordered, adjudged, and decreed that the steamship "Adula," her engines, boilers, tackle, apparel, furniture, provisions, and supplies, is and was at the time of her capture lawful prize of war for an attempt to run the blockade, as charged in the libel, as well as enemy property, and was justly seized by Commander B. H. McCalla, of the United States warship Marblehead, and that the same is now condemned as a good and lawful prize to the United States. The court reserves the right at the foot of this decree to make such further order and decree relative to the sale or disposition of said prize property and the disposition of the proceeds as may be necessary to the adjustment of the several rights of the captors and of the United States and the practice in such cases may require.

In open court, July 28, 1898.

EMORY SPEER, *Judge.*

Endorsement: District court of the U. S., eastern division, southern district of Georgia. The United States of America *vs.* Steamship "Adula," her engines, boilers, etc. Libel *in rem.* Prize. Decree of condemnation. Filed July 28, 1898. S. F. B. Gillespie, deputy clerk.

34 *Notice by Claimant to U. S. Attorney.*

United States District Court, Southern District of Georgia, Eastern Division.

UNITED STATES OF AMERICA
against
THE STEAMER "ADULA," &C.

Take notice that upon the return day of the rule fixing the time and place for the hearing of the motion to take further proofs in this cause at Mt. Airy, in the State of Georgia, on the 9th day of August, 1898, at 4 p. m., we will read the affidavits of Robert Gemmell and W. Peploe Forwood, of which copies are herewith served upon you, and that upon said hearing we will move this honorable

court for directions respecting the sale of the "Adula," unless such directions shall previously have been given.

We will also move this honorable court for an order staying the distribution of the net proceeds of the sale, and we will further apply at the same time for such other relief as may be just.

Dated Savannah, August 3, 1898.

GARRARD, MELDRIM & NEWMAN,
Proctors for Claimant.

To Hon. Marion Erwin, United States attorney, Macon, Ga.

35 *Affidavit of Robert Gemmell.*

In the District Court of the United States, Southern District of Georgia, Eastern Division.

THE UNITED STATES OF AMERICA
against
THE STEAMER "ADULA."

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Robert Gemmell, being duly sworn, deposes and says:

1. I am the resident agent in the city of New York of The Atlas Steamship Company, Limited, the claimant herein, and am familiar with its business.

2. The steamship Adula is the property of said company, and is registered in the name of Sir William Bower Forwood, who is one of the managing directors of said company, pursuant to the common practice in England that vessels belonging to a corporation shall be registered in the name of a managing director resident in England, and he holds said steamer for the benefit of said company.

3. I annex hereto a copy of a statement of the facts relating to the voyages of the steamer Adula from Jamaica to Cuba. This statement was contained in a letter dated Kingston, July 12, 1898, and which was received by me in due course of mail on the 19th of that month. The letter was signed by W. Peploe Forwood, who is the agent of the Atlas Steamship Company in Jamaica. I know him well and have known him for years, and am satisfied from my personal acquaintance with him that his statements are in every particular entirely reliable, and that all the matters stated therein can be proved by him and by the other witnesses mentioned in said statement.

I have submitted the said statement to the counsel of the said claimant, Mr. Everett P. Wheeler, who resides in the city of New York, and am advised by him, after a careful examination of the said statement, that the facts stated therein are material and necessary to the case of the claimants in this action, and that justice requires that evidence of the said facts should be taken and submitted to the court in this action.

36 4. The affidavit of said Forwood, also submitted herewith, was drawn in Jamaica and sent to me in response to a cablegram asking him to send me attested copies of all the charters under which the Adula had made voyages to Cuba.

5. I am advised by said counsel and verily believe that the present case is peculiar in that the Adula had no cargo and went for none, and intended to do and in fact did nothing but seek the consent of the naval authorities of the United States in carrying out one of the officially declared objects for which the present war with Spain was to be prosecuted—that is to say, the relief, security, and protection of suffering non-combatants in Cuba and the removal of them from the abhorrent conditions in which they were innocently placed; consequently the formal interrogatories which alone were put to the witnesses were not adapted to and did not elicit the full truth respecting the issues in this case. From my knowledge of the business of the Atlas Steamship Company and of the current history of the United States during the present year, I state that every one of the allegations in the twelfth and sixteenth articles of the answer is true and can be proved if the court will order further proofs to be taken in this case.

6. I am informed by the said counsel for the said claimant and verily believe that upon the argument which was had in this court upon the proofs *in preparatorio* comment and criticism was made by the counsel for the United States and for the captors upon certain circumstances claimed to appear in evidence or to exist in the case, respecting which justice requires that further proof should be taken, so that the whole facts may be before the court.

The points referred to are as follows:

a. The non-production of the passport or consular letter claimed to have been granted by the Spanish consul at Kingston to Jose R. Solis. I am informed and verily believe that this passport or consular letter was given up with the other papers which were in the possession of Jose R. Solis to Captain McCalla, commander of the U. S. steamship Marblehead, and that said Solis would so testify.

37 I am further informed that the only object of the said passport was to enable the said Solis to obtain the consent of the Spanish authorities in the vicinity of Guantanamo, at Santiago or the vicinity ther-of, and at Manzanillo to take away refugees and non-combatants therefrom in case he should be permitted so to do by the authorities of the United States; that the laws of Spain require such a document, and that a similar document had been obtained for the Adula on the voyages previously made by her, which are mentioned in the aforesaid statement of said Forwood, and with the knowledge of and without objection from the United States consul at Kingston. In case the original should prove to be lost it will doubtless be easy to obtain a duplicate thereof from the Spanish consul at Kingston.

b. As to the voyage to Cienfuegos mentioned in the said statement, on which occasion certain packages containing provisions were landed in that port, I am informed and verily believe that

before the Adula sailed for Cienfuegos on said voyage the United States naval vessels which had been blockading that port had abandoned said blockade and sailed for Santiago, and that this was immediately after the information given them by Captain Walker, of the Adula, as mentioned in said statement of said Forwood, and that the blockade at Santiago was discontinued before the Adula sailed, and that the same can be proved by the officers of said vessels and by their official reports to the Navy Department and by the current history of that period of the war with Spain.

c. As to the course given in the Adula's log, it was stated that this would carry the vessel over the Formigas bank. I am informed and verily believe that, owing to the wind and currents prevailing at the time of the said voyage of the Adula, the course stated in the log was a proper one to steer, and that the effect of said winds and currents upon the Adula, which was in ballast, and consequently high in the water, would be, while she was steering on said course, to carry her west of the Formigas bank. The slight difference between her position given in said log as compared with *that* the course taken in it would have produced is to be accounted for in the same manner, and was the inevitable result of the condition of the winds, as shown in said log, and the current existing in said sea.

38 I am informed and verily believe that witnesses familiar with said navigation will so testify.

d. The Adula first directed her course towards the United States squadron off Santiago, and then sailed direct for Guantanamo. I am informed and verily believe that the true cause of this conduct of the Adula was that her captain expected that one of the U. S. vessels, which were well known to be off the port of Santiago, would come to meet him, and that application could in this way be made to him and to the commanding officer of the squadron, who was supposed to be off Santiago, for leave to enter the port of Guantanamo, and that Captain Yeates, of the Adula, will so testify, and that his reason for so doing was that no vessel came to meet him, though he was in full sight of them; that it was towards evening, and that if he went further towards Santiago it would be too late for him to enter the bay of Guantanamo that night. The coast was rocky and not lighted and the anchorage outside dangerous.

e. The charter permitted the Adula to proceed from Guantanamo to Santiago and from there to Manzanillo. I am informed by the said W. Peploe Forwood and verily believe that he will testify that he fully expected and believed that whatever should be done in respect of such journeying from place to place would be done under the supervision and control of the United States naval commanders, and that when the Adula sailed it was fully expected and believed by said Forwood and the public in Jamaica generally that Santiago would probably be bombarded at an early day; that in accordance with the laws of war the general commanding the United States army besieging Santiago would authorize non-combatants to depart therefrom, all of which shortly after July the first actually happened, as more fully appears from the current history of the time,

and the said Forwood in good faith actually believed (as I am informed by him and verily believe he will testify) that the military and naval officers of the United States would prefer the removal of said non-combatants and refugees from the vicinity of Santiago and would be glad to offer every facility to the Adula to make such removal, and it was also true that the cities of Manzanillo and Guantanamo were in like manner liable to be bombarded at any time and a like notice given to non-combatants in said cities.

39 And the fact that up to the time of the sailing of said Adula the Government of the United States had encouraged and facilitated the removal of refugees and non-combatants from the seat of hostilities in Cuba led said Forwood to believe and he did in good faith believe that no change in this respect had taken place in the policy of the said Government.

f. All cargo which had been placed upon the Adula for delivery in the course of the usual coasting voyage around Jamaica, upon the performance of which she was about to enter when she was chartered to said Solis, was discharged before she began said last-mentioned voyage. I am informed by said Forwood and verily believe he will testify that the sole object of discharging said cargo was to show beyond question that the voyage for which said Adula was chartered was undertaken solely for the conveyance of refugees and non-combatants from Cuba to Jamaica and because said cargo was delivered to the Atlas Company for transportation to Cuba, and said Atlas Company had no right to carry it to Cuba and no intention to do so.

g. The colored seaman, Morris, testified that before the Adula sailed for Guantanamo he had heard on the streets of Kingston that Guantanamo was blockaded. Claimant has had no opportunity to explain this statement, which is in terms contradicted by other witnesses. The fact is, as I am informed by said Forwood and verily believe he will testify, that it was well known in Kingston and had been for some weeks that Guantanamo was in the full and undisturbed possession of the United States naval forces, and that this was understood to be, not a blockade of the bay, but a possession of it, although Morris erroneously called it a blockade.

h. Said Solis was born in Cuba, and testifies that he owed allegiance to Spain, and it was claimed that he was an enemy of the United States. I am informed by said Solis and verily believe that he will testify that he originally and before the people of Cuba were declared by joint resolution of Congress to be free and independent owed allegiance to the Queen of Spain, but that soon after war broke out he left the island of Cuba and had taken no part in hostilities against the United States nor been in any particular an enemy of the same, but, on the contrary, had done all in his

40 power while he remained in Cuba to befriend and assist citizens of the United States who were still in Cuba, and that he cast in his lot with the natives of Cuba and was desirous that a stable government should be established in said island under the auspices of the United States; and I am further informed by said Forwood and I verily believe he and his clerk in Kingston will so testify

that before he would charter the Adula to said Solis he (said Forwood) caused diligent enquiry to be made in Kingston concerning said Solis, and was satisfied as the result of such enquiry, and that the fact was that said Solis was a person of the character before stated in this paragraph and was trustworthy and would not in any particular take advantage of any permission that might be granted him to pass through the American lines to communicate aid or information of any sort to the Spaniards or to persons in arms against the United States.

i. Ten letters were found on said Solis, written by persons in Jamaica to persons in Cuba. I am informed by said Forwood and verily believe he will so testify that he had no knowledge, information, or suspicion that said Solis would take any letters from Jamaica to Cuba, and I am informed and verily believe that said Solis will testify that said letters were taken by him at the last moment solely in answer to the importunities of persons who for a long time had no opportunity of communicating with friends in Cuba; that he originally did not intend to take any letters; that he did not conceal the same and would cheerfully have submitted them to the inspection of the United States naval officers, and not have undertaken to pass the same through the lines without their consent.

j. Certain letters were found in the possession of said Solis which, it was claimed, showed that he had before been engaged in trade between Cuba and Jamaica during the present war between the United States and Spain. I am informed by said W. Peploe Forwood and verily believe that he will testify that he had no knowledge, information, or suspicion when he chartered the Adula to Solis that the latter had ever been engaged in said trade, and I am informed and charge the fact to be that said letters do not show that said Solis was ever in fact engaged in any trade with blockaded ports or with any ports in Cuba, intercourse with which was
41 unlawful during said war, and that in fact large portions of the island have been ever since the declaration of war occupied by friends and not enemies of the United States, co-operating with them to drive the land and naval forces of Spain from Cuba and Cuban waters.

k. Six letters were found on said steamer addressed to persons in the United States by persons in Cuba, and particularly addressed by agents for American citizens whose principals resided in the United States to their said principals. I am informed by said Forwood and verily believe that he will testify that he had no knowledge, information, or suspicion that said letters were brought on the Adula, and I am informed and verily believe that William Walker, the former captain of the Adula, will testify that said letters were brought by him from Cienfuegos at a time when that port was not blockaded and solely as a matter of courtesy to the writers and to the persons to whom they were addressed, and that said letters are wholly letters of business or friendship, and contain nothing which might not lawfully have been permitted to pass through the American lines.

R. GEMMELL.

Sworn to before me this 3rd day of August, 1898.

HARRY M. HEWITT,

[SEAL OF NOTARY.] *Notary Public*, 190, *N. Y. Co.*

42 *Statement Referred to in Annexed Affidavit.*

The first voyage of the "Adula" was undertaken entirely through the agency of Mr. Dent, the United States consul here, who quoted me the figures for the payment of the ship, which were guaranteed by Mr. Fowler at Cienfuegos. I accepted the voyage, but there was no written charter.

The vessel on arrival off Cienfuegos was boarded by two lieutenants of the U. S. warship "Marblehead," to whom was shown the permit and the papers of the ship. Lieutenant Anderson served the captain with a printed copy of the President's proclamation of the blockade of Cienfuegos and several ports on the north side of Cuba, and wrote on the ship's register that he had done so.

The lieutenant then left the vessel, and the "Marblehead" steamed close alongside her, and an officer from the bridge asked the captain if he would take some letters. He replied that he would, and he sent on board a number of loose letters, and then the captain was informed that he could proceed.

The ship arrived at Cienfuegos, was granted pratique, and the following day, at 2 p. m.—that is, on May 10th—the ship sailed with 350 passengers, mostly women and children. When she arrived outside of the port the vessel was again boarded by the same two officers. Lieut. Anderson was informed by one of the passengers where the cable was landed. The captain was asked from the "Marblehead" if he would take a mail, and in return for the courtesy he had received he replied, "Yes." A mail bag was then sent on board, and he was allowed to proceed on his voyage. He arrived at Port Royal on Thursday, the 12th, at 10 a. m., was placed in quarantine, and the loose letters and mail bag were delivered to Dr. Neish, the health officer, and were sent up to the American consul. The ship was admitted to pratique on Sunday, the 15th.

On the 16th May a Cuban refugee resident in this city chartered the vessel to proceed on a voyage to Santiago, to carry refugees. She sailed on the 16th May and arrived on the 17th, sailed the same day at 4 p. m., with 200 passengers, mostly women and children, and proceeded on her voyage. No warship of either kind were off Santiago. On her voyage, however, to Kingston she sighted the
43 lights of a squadron of seven ships steering to the northward. They did not speak the ships.

The ship arrived in Kingston on Thursday p. m. of the 19th and landed her passengers.

On the 21st May the vessel was again chartered, the chartering being done through the British consul from Cienfuegos, partly by cable and partly by his representative here. When going to clear at the Spanish consul we had considerable trouble with him on account of our having brought from Cienfuegos the previous

voyage letters to the United States consul from the warships off the port. I, however, got over the difficulty, and the vessel sailed at 7 p. m. We, not having been successful in getting the seamen out of the hospital, had a permit from Washington, through Consul Dent, to pass the blockade.

At 9 a. m. of the 23rd the vessel arrived off the blockade fleet and steamed towards them. The ship stopped and a boat of one of the blockade vessels boarded her. The officer was shown the ship's papers, and he instructed the captain of the ship to steam down to the flagship, which was the "Brooklyn," Commodore Schley. When she arrived at that ship she lowered a boat and sent an officer on board (the captain states he thinks he was the commander). He overhauled the papers of the vessel and asked the captain of the "Adula" several questions. Capt. Walker informed the commander that the previous week he had been to Santiago, and the commander asked him a lot of information as to the defences of the place, which the commander took down in a note book. Captain Walker also told him that a number of torpedoes, he had heard, were placed in the channel at Santiago, with electrical communication to a little hut. He described the hut and how it was hidden by branches of trees. He also told him of what provisions were in the port and of the squadron that he had passed on the voyage, and that before he left Kingston a cable had been received that the Spanish squadron had arrived at Santiago. He was unable to give any information, although asked, as to the size of the different ships, as he passed them at night-time. The commander then went on board the "Brooklyn," first informing Captain Walker to steam close alongside the flagship "Brooklyn." He did so, and the commodore then asked him several more questions about the Spanish fleet, which he answered to the best of his knowledge. He was then given
44 permission to proceed. He then remembered that he had a file of Kingston newspapers on board, and asked the commodore if he would like them. The commodore sent another boat to take these papers, and this officer asked Capt. Walker as to the defenses of Cienfuegos, and if it would not be possible to take the place by a night attack. Capt. Walker said that there were no heavy guns at the place, but that it was lined by torpedoes, and that on each side of the entrance there were a number of torpedoes, and that on each side of the entrance there were a number of masked batteries, and there were a large number of soldiers at the entrance of the harbor. The officer then left and the ship then proceeded into Cienfuegos. He entered off the port at 1 p. m., and on the pratique officer coming on board he found an extra man on board, which was a waiter who I had put on board to take care of the passengers the ship had gone for. The pratique officer immediately consluded that as the vessel was communicating for so long a time with the fleet outside that this extra man must be an American officer. He would listen to no reason, and arrested the ship and put an armed tugboat to guard her. She was kept there for sixty hours and was released on representations of my managers in Liverpool, who I had cabled to and who communicated immediately with the foreign office. The

vessel sailed on the 26th May direct for Kingston, and when he got outside, to his astonishment, there was not a United States warship in sight. He arrived in Kingston on the 28th May and landed his passengers.

The vessel then made two of her ordinary coasting voyages round Jamaica, when I was offered a further charter for Cienfuegos on a similar business. On this voyage I asked Mr. Dent if he could give me a pass to go through the blockade, should one be there, but he informed me that he was unable to do so, as it was beyond his authority. In this conversation I informed Mr. Dent that owing to her having innocently carried a bag of mails from the "Marblehead" on a previous voyage that I was having considerable trouble with the Spanish consul, and that he would not clear the ship without I took a full cargo, and that the vessel had in consequence been delayed three days on my refusal to do so, but that he had finally consented to clear the vessel if I took some extra stores, which, if not needed by the passengers, could be landed.

45 Mr. Dent not only did not warn me this voyage, but he gave me a mission to undertake, and that was as follows:

The Spanish steamer "Purisima Concepcion" was in the harbour loaded and ready to sail, and he asked me to instruct Captain Walker that if he saw a warship on the voyage to tell him of the sailing of this vessel and to keep a lookout for her within a certain radius which the consul described to me on the chart in my own office. He said if I could do this he did not anticipate the ship would have any trouble in getting into Cienfuegos.

It may be as well for me to here distinctly deny absolutely that the consul warned me in any way what ever against making the contemplated voyage.

I gave the necessary instructions to Captain Walker, of the Adula, and the ship sailed at 4 p. m. on Wednesday, the 15th of June, with a letter of instructions to the captain to proceed to the fleet off Cienfuegos to ask permission from them to enter the port, and, if granted, to go in, and, if not granted, to return to Jamaica, where my charter, which is contained in a simple letter, terminated.

The morning after she sailed, at 10 a. m., the U.S. cruiser "Yosemite" arrived in this port for repairs and stores. At four o'clock of the same afternoon I was asked to go down to the United States consulate to meet Capt. Emory, of the "Yosemite." I met this officer, and in conversation with him I said to him that it was most unfortunate that he did not stay out longer, as he would have caught the Spanish steamer, and I asked him if he did not see the Adula, and he replied that he saw the Adula off the coast and passed her at 2 in the morning. I told him it was unfortunate he did not communicate with her, as the captain had my orders at the instigation of the consul to inform any cruiser that he saw as to the sailing of this Spanish ship. Capt. Emory replied that the Adula could not have seen him, as he was going along without lights. This conversation I mention as a proof of my statement as to Consul Dent having given me a mission to undertake on the voyage that I went to Cienfuegos without a permit.

The conversation took place in the consulate and in the presence of Consul Dent, and I am sure that if Capt. Emory is ques-
46 tioned as to it he will verify my statement. The Adula, however, on her voyage met no warships of whatever nature. On her arrival at Cienfuegos, there being no warships there, the captain went into the port, arriving in on the 17th of June at 11 o'cl'k. She sailed on the 19th with 98 refugees.

Now, I wish to be particularly clear as to the stores the ship was chartered to carry, and I was asked to provide for a large number of passengers. When the vessel arrived the charterer's agent, a Mr. Salines, a Cuban, had only 99 passengers instead of 600 or 700. This left a quantity of extra stores on board, and the captain allowed the charterer, Captain Baxter, to land them on his own account. I have not a list of them, but am prepared to swear that they did not exceed 140 or 150 packages (barrels); and it was only on the representation of distress amongst the inhabitants of the place made to him that he was induced to land any. Typhus fever was at the time raging in the place, and his stores were taken by Mr. Salines for retain purposes amongst the inhabitants.

I mention the circumstances of these stores in order to place before you absolutely the entire truth of the whole transaction of the doings of the Adula in her visits to the island of Cuba.

When the vessel left Cienfuegos she found no vessels outside, but 60 miles S. S. E. from Cienfuegos she spoke the U. S. S. "Yankee," who stopped her and sent a boat with an officer on board. Captain Walker informed this officer of the voyage and showed him his instructions and the ship's papers, and that he had gone into Cienfuegos and had the passengers on board, and that the U. S. S. "Yankee" was the first U. S. warship he had seen since he had left Kingston. He looked up the passenger list, a copy of which the captain offered to give him.

They both went on board the S. S. "Yankee," and the following conversation took place between the captain of the "Yankee" and Captain Walker. The captain of the "Yankee:" "You are from Cienfuegos, Captain?" Captain Walker: "Yes." Captain of the "Yankee:" "Cienfuegos is blocked, and you must not go back, Captain." Captain Walker: "Very well, sir; all right." Captain of the "Yankee:" "I am sorry to have detained you, Captain; you can proceed. Good-bye." Captain Walker: "Thank you. Good-bye." The vessel proceeded to Kingston and arrived here on the 21st June.

47 The vessel then went around the island on her ordinary coasting voyage and returned here on the 27th June. On the evening of the 27th June a Mr. Solis called at the office at 4.30, he having just arrived by the train from Montego bay, having landed from Manzanillo with a cargo of refugees. He was informed that office hours were over, to call again next morning, which he did at 10 a. m. Mr. Solis wanted to charter the vessel for a voyage to Guantanamo, Santiago, and Manzanillo for the purpose of taking off refugees. While I was in conversation with him I had one of my clerks out in the town to enquire who Mr. Solis was, and, hav-

ing got full information that his voyage for refugees was *bona fide*, I chartered the vessel to him, and he left my office at 11.30, with a copy of the agreement in his pocket, and went to the United States consul and showed the agreement to him and asked him for a permit to go through the fleet. I am not aware what the reply was. He gave the copy of the charter-party to Mr. Dent to read (and Mr. Dent acknowledged to me the following day that he had read it at 2 p. m.). The vessel was ordered to be ready for sea at 4 o'clock. Captain Walker being ill, she was taken charge of by her chief officer, Mr. Yeates, to whom I gave a letter of instructions.

As I was leaving my office at 20 minutes to 5 and a few minutes (say ten) before the ship sailed (she ought, however, to have sailed at 4 o'clock) Mr. Dent came into my office, and I must now give you in detail what occurred and the conversation that took place. You must excuse my giving you this detailed statement and the unofficial language which it will contain, but I give it to you as it occurred, without reference to officialism. I said, "Hello, Dent; what can I do for you?" Then he casually remarked, "Oh, nothing;" then I said, "I was just going home; come in and have a whiskey and soda." He came into my private room, and we sat on the table together. As we were having our drink he asked me if the "Adula" had sailed, and I said, No; she was going in five minutes or was just going off. He replied, "Well, Forwood, I would not advise you to let the ship go; they won't let her into Guantanamo, and they will be watching for her." I said to him, "Oh, Dent, let me show you the captain's instructions. He has got orders to go to the fleet there and ask their permission to take some refugees." "Well," he said, "I don't know, but they will be
48 watching for her, and I think that Senor Solis is a Spanish agent, carrying $300,000 in gold to buy over the rebels in the American camp." I told him that I had enquired about the man, and that it was one of the usual Kingston yarns. He simply shrugged his shoulders, talked about some other matters for a minute or two, we finished our drink, and he left the office. Prior to his leaving he sent a telephone message to his office; about what I do not know.

This is all the conversation I had with Mr. Dent about the voyage, and I am quite sure that you will agree with me that it would be beneath the dignity of the United States consul to convey an official warning in such a manner, especially when he knew the entire particulars of the voyage the ship was going on from, by his own acknowledgment, two o'clock in the afternoon. It never dawned on me for a moment that the purpose of the United States consul in my office was official, and that he was conveying to me an official warning.

As matter of fact, the way it was said to me I took it more as a chaff than anything else.

If Consul Dent had intended to convey to me a warning and had written a dispatch to me, the charter would never had been made, or if Consul Dent when he came to my office had stated, "Captain Forwood, I beg to officially warn you, as United States consul,

against sending the 'Adula' on the contemplated voyage" I should never had dreamed of despatching the ship; but, taking it as I did, simply as an idle talk in unofficial hours and over, as I stated in the letter, a whiskey and soda, I appeal to you whether this could be considered in any way whatever as an official warning to me from so high an officer as the consul of the United States of America resident in Jamaica.

I would further point out to you that the official notification of the blockade of the three ports—Guantanamo, Santiago, and Manzanillo—was not declared by this Government here until the 6th of July, 1898.

But if I had been warned officially by the consul not to send the ship, even although the proclamation of the President was unknown to this island at the time, I would not have taken the risk of sending the vessel.

The ship sailed ten minutes after the consul left the office.

49 *Form No. 89. Certificate that Officer is Qualified to Administer Oath (Paragraphs 188 and 446).*

I, Lewis A. Dent, consul of the United States of America at Kingston, Ja., do hereby certify and make known to whom these presents shall come that R. A. Walcott, before whom the annexed affidavit of W. Peploe Forwood hath been made, is a notary public, duly authorized to administer oaths and affirmations and take declarations in lieu of oaths, and that I believe the deponent is worthy of credit and qualified to verify the annexed affidavit.

In testimony whereof I have hereunto set my hand and seal of office, at Kingston, Jamaica, aforesaid, this fourteenth day of July, 1898.

[SEAL.] LEWIS A. DENT,
U. S. Consul.

I, Wellington Peploe Forwood, of the city and parish of Kingston, in the island of Jamaica, in the British West Indies, being duly sworn, make oath and say as follows:

1. That I am the agent in this island of the Atlas Steamship Company, Limited, who are the owners of the British steamship "Adula."

2. That on the seventh day of May, one thousand eight hundred and ninety-eight, in pursuance of a verbal arrangement made between myself and Lewis A. Dent, Esquire, the American consul in this city, on behalf of Mr. Fowler, I despatched the said steamship "Adula" to Cienfuegos, in Cuba, to bring away refugees, without any written agreement or charter-party. The said steamship duly performed the said voyage and returned to Kingston, Jamaica, on the fifteenth day of May aforesaid, and that was the first voyage of the said steamship to Cuban ports.

3. That on the sixteenth of May aforesaid the said steamship "Adula" was again despatched to Cuban ports in pursuance of a charter-party entered into by me with a Mr. Portundo. The ship

returned to Kingston on the 19th day of May, 1898, and subsequently on the final settlement of all the matters in relation to the voyage the charter-party was destroyed; but I find that an impression of the said charter-party was taken off in my letter book, which impression I say is a true copy of the original, and, having been cut out of my said letter book, is now hereunto annexed and marked with the letter A.

50 4. That the next voyage of the "Adula" was under a charter-party with Mr. Fowler. She was despatched from Kingston on the 21st of May, 1898, and returned on the 28th of the same month. On the final settlement of the accounts for the voyage the charter-party was also destroyed as being no longer required; but a true impression of it was also made in my letter book, which, having been cut out, is also hereunto annexed and marked with the letter B.

5. That the fourth voyage was made under a charter-party with Captain Baxter, the original of which is hereunto annexed, marked "C." The ship was despatched on this voyage on the 15th day of June, 1898, and returned to Kingston on the 21st day of the same month.

6. That the fifth voyage was commenced on the 28th day of June, 1898, under a charter-party with Jose R. Solis, which charter-party is hereunto annexed, marked D.

7. That the said steamship has never returned to Jamaica, and I have never seen her since the 28th day of June, 1898.

8. That the several voyages of the said steamship "Adula" were severally entered upon and performed for no other object or purpose than those stated on the face of the said documents hereinbefore mentioned, and that the said ship never performed any other voyages to Cuban ports.

W. PEPLOE FORWOOD.

Sworn to at the city and parish of Kingston, in the island of Jamaica, this fourteenth day of July, A. D. 1898, before me—

R. A. WALCOTT,

[SEAL.] *Notary Public, Jamaica.*

51 A, May 16th, 1898.

It is hereby mutually agreed between Mr. Portundo, at present residing in this city, and the Atlas Steamship Company, for the chartering of the S. S. "Adula" to go to Santiago de Cuba and back to Kingston on the following terms:

Mr. Portuondo to pay the sum of £500 for any number of passengers up to 250, children under 11 years counting two for one. Any number over 250 and up to 300 the payment to be made is £600. Over and above 300 passengers taken on board to be paid for at the rate of £3 per head. The port charges in Cuba are to be paid by Mr. Portuonda, the passengers to accept what accommodation the ship can give, and to feed themselves at their own expense, water only to be supplied by the ship free of charge. The risk of quarantine is for ship's account; but in case of quarantine, Mr. Portuondo is to pay the Atlas Steamship Co. at the rate of 4/ per

day or part of the day for each and every passenger that is on board. 24 hours to be allowed the ship in Cuba, the time occupied in embarking passengers above that to be paid for at the rate of £100 per 24 hours.

Signed for and on behalf of—

THE ATLAS STEAMSHIP CO.
W. PEPLOE FORWOOD,
General Agent, Ja.

Signed by and for—

Mr. PORTUONDO.

This is the document referred to in the affidavit of Wellington Peploe Forwood as thereunto annexed, marked A. Dated this 14th day of July, 1898.

W F.

R. A. WALCOTT,
Notary Public, Jamaica.

"B," May 21st, 1898.

It is hereby agreed between Mr. Fowler, at present residing in this city, and the Atlas Steamship Co. for the chartering of the S. S. "Adula" to go to Cienfuegos forthwith, and Trinidad, if so ordered at Cienfuegos, and back to Kingston, on the following terms:

Mr. Fowler to pay at the rate of £100 per day, with a minimum payment of £500, quarantine detention at the risk of the owners of the ship. This sum will include 200 adult passengers, 2 52 children under 11 years of age to be taken as one adult, children under three years free. Passengers to be victualled by the ship at the rate of 4/ per day or part of a day; this sum to be paid with charter money. Port charges and passenger tax to be paid by the charterers. The ship is to provide authority to pass the blockade at Cienfuegos. Should Trinidad be blockaded and the fleet prevent the vessel from entering, she is to proceed to Jamaica without any deductions to be made from the moneys to be paid under this agreement.

Should the charterers exceed the number of 200 passengers, they
Two I W F
are to pay the company at the rate of £2 per adult, and children as above; that is, two children under 11 years to count as one passenger and children under three free.

W F W a w

The minimum charter money, £500, victualling of passengers at 8/ per head, and extra passengers carried as per this agreement, is to be paid at Cienfuegos by Mr. George R. Fowler before the sailing of the ship; and any balances, should there be any, to be paid here in Kingston by Mr. Fowler out of a deposit to be made by Mr. George R. Fowler to Capt. Walker of £200.

Spanish sovereigns to be taken at nineteen shillings and three pence.

For THE ATLAS STEAMSHIP COMPANY,
W. PEPLOE FORWOOD, *General Agent, Ja.*

The foregoing two sheets of paper constitute the document referred to in the affidavit of Wellington Peploe Forwood as thereunto annexed, marked "B." Dated this 14th day of July, 1898.

W F.

R. A. WALCOTT,
Notary Public, Jamaica.

53 "C."

KINGSTON, JA., *June 12th*, 1898.

Capt. W. Peploe Forwood, Atlas S. S. Co.

DEAR SIR: In reference to our conversation on the subject of chartering the "Adula," I will take the ship for the conveyance of refugees from Cienfuegos to Kingston on the terms you name—*i. e.*, I will pay you the sum of £900 for the voyage, you taking quarantine risks. It is understood that the voyage is to be wholly and solely for the carriage of refugees and for no other purpose.

Should you wish me to make a more formal charter-party, I shall be prepared to do so. I remain, dear sirs,

Yours faithfully, P. H. BAXTER.

I accept for the Atlas S. S. Co.

W. PEPLOE FORWOOD,
General Agent, Ja.

This is the charter-party referred to in the affidavit of Wellington Peploe Forwood, as thereunto annexed, marked C. Dated this 14th day of July, 1898.

W. F.

R. A. WALCOTT,
Notary Public, Jamaica.

[Seal of R. A. Walcott, Notary Public, Jamaica.]

"D."

It is hereby mutually agreed between the Atlas Steamship Company, Limited, hereinafter called "the company," and Mr. José R. Solis, hereinafter called the charterer, as follows:

That the company put at the disposal of the charterer the steamer "Adula" for the conveyance of passengers from Cuban ports hereinafter to be named, to Kingston. The ports that the vessel is to go to are Manzanillo, Santiago, and Guantanamo; but it is distinctly understood and agreed by the parties aforesaid, that it shall not be deemed a breach of this agreement should the steamer be prevented from entering any of those ports from causes beyond the control of the company, but that should she be able to enter one or all of them, she shall embark the passengers that the charterer shall engage for her and proceed on her voyage. If she is not permitted to enter either Manzanillo, Santiago or Guantanamo the
54 vessel is to return to Kingston and the voyage shall be considered completed, and the charter money hereinafter referred to earned without any deductions.

The company reserves the right to refuse to take any passengers that in the captain's opinion *is* in such a state of health as may seriously interfere with obtaining of pratique at Port Royal. The passengers are to be provided with such accommodation as the ship can offer at this moment, and are to be provided with victualling at the company's usual scale of charges, the victualling to be paid by the passengers.

The port charges are payable by the charterers, and the charterer is to provide a good and efficient Government pilot to conduct the ship safely into the ports which have been named. Should she be permitted to enter them, the charterer guarantees that the proper and efficient clearances shall be obtained for each port, so that the ship shall not be subjected to any fines for breach of regulations. For these services the charterer shall pay the company for the hire of the vessel one hundred pounds per day or part of a day for the first ten days of the voyage. After the expiration of the first ten days, the charter money shall be at the rate of fifty pounds per day or part of a day, and it is agreed that the charter money shall count from the time the ship leaves the wharf at Kingston until she returns to the wharf at Kingston. A minimum payment however, is agreed to of five hundred pounds.

On the signing of this agreement the charterers shall pay to the company the sum of one thousand pounds as a deposit for the payment of the charter money. The company herewith give their undertaking to the charterer that should the charter money be less than the amount of deposit, that they will refund to the charterer the balance on demand, it being always understood that a minimum payment of £500 is payable by the charterer.

It is understood that the company shall provide all coals, stores and crews' wages.

Signed in triplicate this twenty-eighth day of June, one thousand eight hundred and ninety-eight by the parties aforesaid.

For THE ATLAS S. S. CO., LTD.,
W. PEPLOE FORWOOD.
JOSÉ R. SOLIS, *Charterer.*

55 Should the vessel be stopped for repairs to machinery or through being stranded, the time she is stopped and (or) aground shall not be counted as time under the attached agreement.

The company will provide the charterer with a boat and crew for the purpose of entering any of the ports named in the agreement attached.

The company will give the option to the charterer for another voyage similar to this on similar terms, providing the charterer gives the company twenty-four hours' notice after the arrival of the steamer in Kingston, the voyage to commence, if the ship be ready, twelve hours after the expiration of the twenty-four hours.

For THE ATLAS S. S. CO., LTD.,
W. PEPLOE FORWOOD,
General Agent.
JOSÉ R. SOLIS, *Charterer.*

The foregoing three sheets of paper constitute the charter-party referred to in the affidavit of Wellington Peploe Forwood, as thereunto annexed, marked D. Dated this 14th day of July, 1898.

W F.

R. A. WALCOTT,
Notary Public, Jamaica.

Endorsement: U. S. district court, southern district of Georgia, eastern division. The United States of America against The Steamer Adula. Notice and affidavits of Robert Gemmell and W. Peploe Forwood. Filed in clerk's office August 15, 1898. S. F. B. Gillespie, dep. clerk.

56 *Answer of the United States to Motion to Take Further Proofs.*

United States District Court, Eastern Division, Southern District of Georgia.

THE UNITED STATES OF AMERICA
versus
STEAMSHIP "ADULA." } Libel. Prize.

And now comes the United States, by Marion Erwin, United States attorney, and for answer to said motion, as set forth in the affidavit of Robert Gemmell, says:

1. That Gemmell is a resident of New York and agent of the Atlas Steamship Company is not disputed.

2. That the steamer Adula is registered in the name of W. *B.* Forwood is not disputed, but appears from the certificate of registry already in evidence; nor is it disputed that he is a managing director, and that W. P. Forwood is resident agent at Kingston; that the vessel is owned in England, subject to whatever rights the evidence shows Don Jose R. Solis had in her at the time of the capture, is not disputed.

3. That Gemmell received the statement of facts mentioned from W. P. Forwood by due course of mail on July 19, 1898, and that Gemmell believes them to be true, is not disputed.

4. That the affidavit of Forwood, mentioned in the 4th paragraph of Gemmell's affidavit, was sent to him as stated, is also not disputed.

5. That Gemmell, a resident of New York, may believe the allegations contained in the 16th article of the answer of claimant to libel to be true is not disputed. It does not appear that he knows anything about the facts otherwise than through the papers and exhibits attached to his affidavit, which will be hereinafter considered.

6 (*a*). That counsel for the United States commented on the nonproduction of the passport or consular letter shown by the evidence to have been given by the Spanish consul at Kingston to Don Jose R. Solis, and which letter is not among the papers captured upon the Adula. is admitted. Don Jose R. Solis has already testified that he

turned over all his papers to Commander McCalla and Lieutenant Anderson at the time of the capture. Lieutenant Anderson, in his affidavit made in accordance with the statute, declares that he turned over all the papers seized by him under the direction of Com-
57 mander McCalla to the prize commissioners. He makes a complete schedule by name of the different papers, and swears that all the papers were delivered without suppression or fraud to the prize commissioners. The fact that the passport was suppressed is the material part of the evidence, and a production of a certified copy from the Spanish consul would not throw any light upon the case. The evidence of Mr. Solis is already before the court and the affidavit of Mr. Anderson was read before the court at the hearing in preparatorio. No new proof on that point would throw any light upon the question. The suppression of the passport at the time of the first capture, taken in connection with the fact that Don Jose R. Solis was placed on the crew list under the name of J. R. Solis, supercargo, at the suggestion of Captain Forwood before the vessel left Kingston, and the fact that the clearance of the vessel was only for the port of Guantanamo indicates a strong purpose on the part of the Adula and her owners and the charterer to conceal from any American warship which they might meet at sea or off Santiago or at Guantanamo the fact of the charter of the vessel to a Spaniard and the full scope of the intended voyage. Mr. Solis would not be allowed to go on the stand now to explain any withholding of the passport at the time the ships were seized.

6 (*b*). That Gemmell was informed that the blockade of Cienfuegos had been abandoned by the American fleet before the Adula made her third trip into that port, on June 19th, may be true. It does not make it a fact, however, and that he was informed that the blockade at Santiago was discontinued before the Adula sailed, and that the same can be proved by the officers of the vessels and by their official reports to the Navy Department and by the current history of that period of the war with Spain, may be true, but the fact that Gemmell had such information would not make it true. It is known by current history that Cervera was shut up in Santiago for many weeks prior to July 3rd, when he attempted to break through the American fleet. The capture was on June 29th, just four days prior to the great naval battle of July 3rd. So far
58 as the third trip to Cienfuegos is concerned, it may be true that the American war vessels off that port on or about the 21st of May temporarily left the station in pursuit of Admiral Cervera's fleet into Santiago.

If that be true, still there was no counter-proclamation from the President of the United States withdrawing notice of the blockade, and the Adula had no right to presume from the mere fact that she failed to see any warships on her outward trip from Cienfuegos on her last permitted trip, as aforesaid, that there was a raising of the blockade. At best she could only claim to be exempt from capture on the third trip because of the fact that she had gotten into the port under circumstances which showed that at that particular time the blockade was not effective, although on her outward voyage she

did not escape being boarded by the Yankee. We are not proceeding to forfeit the Adula because of that trip, however, but the evidence as to that trip shows conclusively that the Adula was engaged prior to the time of her seizure in running into ports declared officially blockaded and taking chances of running in with large quantities of supplies and taking out persons and officials of all character whenever she was so fortunate as to find the blockading squadron off their guard. The third trip to Cienfuegos demonstrates conclusively the business in which the Adula was engaged, whether she was technically subject to forfeiture for her acts on that trip or not.

6 (*c*). The evidence as to the false course given to the Adula as entered on her log appears in the evidence of Lieutenant Anderson taken *de bene esse*. As this was not considered by the court on the first hearing, new evidence to meet it is, of course, not in place. The reasons for the course he did take, which brought him out within ten miles of Santiago, are fully and sufficiently stated by Captain Yeats, all of which the court has before it, and therefore there is no occasion for any new testimony on this point. It is a matter wholly within his own mind, and he cannot now be properly recalled to change his testimony.

6 (*d*). The matters herein stated are within the breast of Captain Yeats, who has testified fully as to them already, and if his
59 reasons given for going by Santiago are not satisfactory they arise from all the circumstances in the case.

6 (*e*). That Mr. Gemmell believes the various things stated in paragraph 6 (*e*) of his affidavit may be true. They are all stated on information of Mr. Forwood, and the information of Mr. Forwood is attached as an exhibit and will be considered further on herein. The matters of belief on the part of Forwood therein stated, however, furnish no legal excuse for the conduct of the vessel.

6 (*f*). That the purpose of discharging the cargo at Kingston before the sailing of the Adula was as therein stated is immaterial.

6 (*g*). The evidence suggested from Captain Forwood in paragraph 6 (*g*) of Gemmell's affidavit, when placed in juxtaposition with that suggested from the same source in paragraph 6 (*e*), shows conclusively full knowledge on the part of Captain W. P. Forwood, the owner's agent at Kingston, of the actual investment and blockade of Guantanamo, and instead of explaining the testimony of Morris strengthens it. In said paragraph 6 (*g*) it is claimed that Forwood will testify as follows: "That it was well known in Kingston and had been for some weeks that Guantanamo bay was in full and undisturbed possession of the United States naval forces, and that this was understood to be not a blockade of the bay, but a possession of it." In paragraph 6 (*e*) it is stated that Forwood will testify "that in good faith he actually believed that the military and naval officers of the United States would prefer the removal of such noncombatants and refugees from the vicinity of Santiago, and would be glad to offer every facility to the Adula to make such removal, and it *was* also true that the cities of Manzanillo and Guantanamo

were in like manner liable to be bombarded at any time and like notice given to non combatants in said cities." These two statements put together show knowledge of the actual investment of the mouth of the harbor by the Americans and the possession of the interior port by the Spaniards.

60 6 (*h*) Solis has testified positively and unequivocally his loyalty and allegiance now to Spain, and the evidence shows conclusively his le-al loyalty to Spain throughout the Cuban and American war. He would not be allowed to change his testimony after consulting his counsel. The other suggestion that Captain Forwood's testimony be taken to show that he made diligent enquiry in Kingston about Mr. Solis by means of a clerk before he made the charter "and found that said Solis was a person of the character before stated in this paragraph and was trustworthy," etc., would amount to nothing if it was taken.

The circumstances of Mr. Solis' relations with the Spanish consul, his previous business—running in supplies to Spanish ports in Cuba—were all known to Captain Forwood, according to his own admission, as likewise was the fact that he was just from Manzanillo, his home, then in the possession of the Spanish forces.

6 (*i*). Mr. Solis has already testified all about the letters mentioned in this paragraph to the same effect as suggested, and there is no occasion for any new testimony from him.

6 (*j*). The suggestion that the testimony of W. P. Forwood be taken to show that he did not know the previous business in which Mr. Solis was engaged and to the fact that a large portion of said island of Cuba was occupied by friends and not enemies of the United States, and that intercourse with such parts was not interdicted ought not to be seriously taken. On page 10 of the statement of Mr. Forwood attached to said motion the following statement appears:

"On the evening of the 27th of June a Mr. Solis called at the office at 4.30, he having just arrived by train from Montejo bay, having landed from Manzanillo with a cargo of refugees."

If it did not otherwise appear, as it does in the evidence, that Manzanillo was in the actual possession of the Spaniards at the time, and therefore that Mr. Forwood must have known that Don Jose R. Solis was a Spaniard trading from a Spanish port, the court would take judicial notice of the fact that all the ports of Cuba were held by the Spaniards and not by the Cuban insurgents, the suggested friends mentioned in the paragraph, the fact having been repeatedly stated in several state papers addressed by both President Cleveland and President McKinley to Congress as a reason for not recognizing belligerency.

61 6 (*k*). The six letters referred to in paragraph 6 (*k*) of the motion are really fifty six. Some of these letters show that they were brought out of Cienfuegos on the third trip, when the vessel was under the command of Captain Walker. Others were from Kingston for people at Santiago, Guantanamo, and Manzanillo, intended to be delivered on that trip. The dates of the letters will show all that is asked to be proved by Captain Walker.

7. Coming, now, to the alleged statement made by Mr. Forwood himself, attached to Mr. Gemmell's affidavit, the statements therein, assuming them to be presented to the court in the form of an affidavit from Mr. Forwood himself, as they are not, taken in connection with the other proofs in the case already in, would not warrant the great expense and delay incident to opening the case to obtain his testimony thereto. They would not, in fact, alter the judgment of the court in any particular.

7 (*a*). The first admission therein is that the President's proclamation of the blockade of Cienfuegos had been, on May 9th, delivered to the captain of the Adula. It is also admitted that the first two trips to Cienfuegos, on May 9th and May 21st, were made by permission of the American consul at Kingston, under authority from Washington, to bring off American refugees from Cienfuegos, and that on both of these trips Cienfuegos was guarded by American war vessels, from which permission to pass was only given when authority previously obtained from the consul under direction from Washington was exhibited.

7 (*b*). That on these two permitted trips the Adula may have communicated information deemed by the Adula's officers to have been important to American forces may be true. The same thing may have been done to propitiate the Spanish authorities when the vessel went into Spanish ports. From the fact that the Adula carried in supplies on the third trip to Cienfuegos and the good terms she was on with the Spanish authorities, it is clearly evident that he was trying to appear to act the part, at least, of a mutual friend. The statements in reference to information given to the American authorities have no legal bearing upon the case.

62 7 (*c*). The sole ground appearing in the evidence suggested for the assumption on the part of the Adula that the blockade of Cienfuegos had been raised appears in the statement on page 5, as follows: "The vessel sailed (from Cienfuegos) on the 26th of May direct for Kingston, and when he got outside, to his astonishment, there was not a United States warship in sight. He arrived in Kingston on the 28th of May and landed his passengers. The vessel then made two of her ordinary coasting voyages around Jamaica, when I was offered a further charter for Cienfuegos on similar business." The assumption that the blockade was raised was based solely upon Captain Walker's failure to see ships in the offing when he passed out on the second of the permitted trips. That Mr. Forwood knew that the President's proclamation of blockade had not been withdrawn, and that the Goverment of the United States had not abandoned its idea of keeping said port blockaded, is apparent from the further statement on the same page, as follows: "On this voyage I asked Mr. Dent if he could give me a pass to go through the blockade, should one be there, but he informed me that he was unable to do so, as it was beyond his authority." In spite of this, the third trip to Cienfuegos was made and a large quantity of supplies carried in.

7 (*d*). The attempt to show that this third voyage to Cienfuegos was practically authorized by Mr. Dent, by reason of the alleged

fact that Mr. Dent, American consul, requested Captain Walker if he met an American war vessel on the voyage to tell the commander to look out for the "Purisima Concepcion" amounts to nothing when it is coupled with the statement that at that very time Mr. Dent informed him that he was unable to give permission, as it was beyond his authority; and document No. 66, letter of May 21st, 1898, of the same Captain Forwood to Captain Walker relative to the second permitted trip to Cienfuegos, shows that he knew, even prior to that statement of Consul Dent, that authority to pass the blockade was required from Washington. It contains this statement: "In giving this letter to the blockade, be sure and ask the officer if he would allow the ship to pass another voyage without cabling to Washington." The further allegation on page 6 of said statement of Forwood, as follows:

63 "It may be as well for me to here distinctly deny absolutely that the consul warned me in any way whatever against making the contemplated voyage," when coupled with his admission that he had received notice of the President's proclamation of blockade, and that the consul told him he was unable to give him permission to go through the blockade, as it was beyond his authority, is contradictory of the statement itself.

7 (*e*). The further allegation, on page 7, of Forwood's statement relative to the third trip to Cienfuegos shows conclusively that he knew that there was no real intent on the part of the American fleet to abandon the blockade at that place. His statement is as follows: "I gave the necessary instructions to Captain Walker, of the Adula. The ship sailed at 4 p. m. on Wednesday, the 15th of June, with letter of instructions to the captain to proceed to the fleet off Cienfuegos and ask permission from them to enter the port, and if granted to go in, and if not granted to return to Jamaica." In spite of these instructions, Captain Walker, according to the admissions, reached Cienfuegos, found no ships outside, went in, and delivered large quantities of supplies. The instructions in that case, it appears, were precisely similar to the instructions in regard to Guantanamo, Santiago, and Manzanillo on the trip on which the Adula was captured.

In the face of that admission, can it be doubted that if the Adula had found the American fleet temporarily absent from the entrance to either of the said three last-mentioned ports she would have gone in, precisely as she did at Cienfuegos? In other words, the statement of Capt. Forwood shows conclusively that the instructions relative to making inquiry at the fleet if permitted to enter was only intended as an excuse in case the vessel was stopped, but that the vessel was to go in and take in provisions and take out whatever she could if she got an opportunity to pass the fleet on any of these trips.

7 (*f*). The excuse which the statement of Mr. Forwood suggests he will make under oath as to the landing of provisions and stores on the third trip to Cienfuegos is no excuse at all. He says, "I was asked to provide for a large number of passengers.

64 When the vessel arrived the charterer's agent, a Mr. Salines, a Cuban, had only ninety-nine passengers instead of six hun-

dred or seven hundred. This left a quantity of extra stores on board, and the captain allowed the charterer, Captain Baxter, to land them on his own account. I have not a list of them, but am prepared to swear that they did not exceed 140 or 150 packages—barrels—and it was only on the representations of the distress among the inhabitants of the place made to him that he was induced to land any." Captain Forwood and the owners are just as much responsible for Captain Walker's acts as if they had authorized them. It appears from the above that Mr. Salines, the charterer's agent and actual manager of the expedition, was a Cuban, evidently a Cuban loyal to the Spanish government, else he would not have been allowed in and out of Cienfuegos at the time, and that this man was allowed, with the consent of the captain, to put off these supplies, which, according to the testimony of Captain Yeats, consisted of beef, butter, cheese, pork, etc. The owners of the Adula were just as much responsible for the acts of Mr. Salines under the circumstances as if they had authorized them. The fact that the Yankee did not seize the Adula on the third trip out of Cienfuegos does not affect the question. The whole extent of the information in possession of the commander of the Yankee at that time is stated on page 9 as follows: "He looked up the passenger list, a copy of which the captain offered to him. They both went on board the steamer Yankee, and the following conversation took place between the captain of the Yankee and Captain Walker: Captain of the Yankee, You are from Cienfuegos, Captain? Captain Walker, "Yes." Captain of the Yankee, "Cienfuegos is blockaded, and you must not go back, Captain." Captain Walker, "Very well, sir: all right." Captain of the Yankee, "I am sorry to have detained you. You can proceed. Good-bye." It appears from this conversation that the Yankee did not know that the vessel had had a previous actual warning endorsed on the log book by Lt. Anderson, but that he did notify him the blockade was on, and that he must not come back. It does not appear that the Yankee knew that large supplies had been landed at Cienfuegos, or that the trip was made without permission from Washington, two trips having been previously made with such permission.

65 In any event, proof of the facts stated would not throw any light on this transaction. We are not now proceeding to forfeit the vessel because of her trip into Cienfuegos, because the right to capture ended when the vessel returned to Kingston on that trip, but evidence of what the vessel did under precisely similar instructions to those she had in this case on a previous trip shows clearly the business in which she was engaged and her intent to enter in this case.

7 (*g*). The allegations of Mr. Forwood's statement, page 10, as to the circumstances under which he became acquainted with Mr. Solis on the 27th of June, he having just arrived by train from Montejo bay, having landed from Manzanillo with a cargo of refugees, shows that Captain Forwood had sufficient notice of Mr. Solis' character to have resulted in full knowledge of his purpose if he had made diligent enquiry. The statement on page 11 as to the conversation

between Dent and Forwood at Forwood's office twenty minutes of five—a few minutes, say ten, before the ship sailed—is in itself an admission of all the notice required. He says: "The consul said, Well, Forwood, I would not advise you to let the ship go; they won't allow her into Guantanamo, and they will be watching for her."

Again: "Well," he said, "I don't know but they will be watching for her, and I think that Sr. Solis is a Spanish agent carrying $300,000 in gold to buy over the rebels in the American camp." "I told him I had inquired about the man, and that it was one of the usual Kingston yarns. He shrugged his shoulders, talked about some other matters for a minute or two, we finished our drink, and he left the office. This is all the conversation I had with Mr. Dent about the voyage." The suggestion that this statement was made over a social glass, and therefore it was not to be considered as official, is without merit. As a matter of fact, the log book shows the boat did not sail until 6 p. m., over an hour later, and that there was plenty of time for the owner to have acted if he had wanted to do so. There is positive testimony, however, in the record that Mr. Dent had given ample warning to the Adula and her owners not to proceed on the voyage, and that this warning had been conveyed already to Captain Forwood prior to the conversation with Consul Dent on the occasion to which he alludes.

66 In answer to the 41st interrogatory, Mr. Solis testified: "He (Dent) said to me he was sorry he could not give me such permission; that he was not allowed to give such permission; that it could only come from Washington, from the Government. Mr. Dent told me not to go. I don't remember his giving me any particular reason for not going. He told me not to go, and I answered him that I was not going for anything wrong." In answer to the 12th interrogatory, Mr. Solis testified in regard to the same conversation with Mr. Dent, "I explained to Mr. Dent the idea of my voyage. He told me he was sorry he could not give me the passport I wanted, because he was not allowed to give such passports unless he had permission from the American authorities in Washington. As I was going to leave two hours afterwards, he said there was no time to ask permission. I said, 'Look here, Mr. Dent, I don't think there is anything wrong, because my intention is to go to Guantanamo and ask permission of the American admiral to allow me to go; if he does not allow me to go, I come back.' Then I went to see Mr. Forwood, agent of the Atlas Company, and I explained what Mr. Dent had told me." It is clearly evident that the reason Mr. Dent did not enter into fuller explanation with Mr. Forwood in the conversation Mr. Forwood relates was because it appeared from the conversation that Mr. Solis had already communicated all the previous conversation with Mr. Dent to Mr. Forwood. The testimony of Mr. Forwood, therefore, on that point would not change the status of the case in any respect.

7 (*h*). The allegation in the statement of Mr. Forwood, on page 13, that the official notification of the blockade of the three ports of Guantanamo, Santiago, and Manzanillo was not declared by this

Government here until the 6th of July, 1898, if proven, would not alter the case. That the British government did not give notice of the official blockade until that time at Kingston does not alter the case where it is shown that the particular vessel had actual notice of the actual blockade and investment of the ports and was warned not to go. The official notice is intended to meet the cases of vessels which would not otherwise have actual notice.

67 8. If the evidence was, however, absolutely clear that Mr. Forwood, the registered owner of the vessel in England, as well as Mr. Forwood, the owner's agent in Kingston, Jamaica, acted throughout the entire transaction with the utmost good faith, which is not shown in regard to Mr. Forwood at Kingston (by a good deal), it would not alter the liability of the vessel to forfeiture on account of the acts of the captain and charterer, into whose custody they had placed the vessel. They are just as much responsible for the act of Captain Walker in permitting Mr. Salines to land stores and supplies into Cienfuegos on the third trip to that port as if they had expressly authorized it. They are just as much responsible for the conduct of Don Jose R. Solis in carrying letters and communications and attempting to enter the ports of Guantanamo without speaking the American ships when they passed the ships off Santiago as if they had expressly instructed it. There is absolutely not a suggestion of any testimony in the motion for new proof which, if produced in court, would alter the result one particle.

9. It will be noticed that in the affidavit made by Captain Forwood before the American consul, Mr. Dent, at Kingston, he carefully avoided making any statement in regard to the alleged communications with the consul, which are now brought in by way of extenuation.

The affidavit merely identifies papers.

August 9, 1898.

MARION ERWIN,
U. S. Attorney.

Endorsement: United States district court, eastern division, southern district of Georgia. The United States *vs.* The Steamship "Adula." Libel *in rem*. Prize. Answer of the United States to motion of claimant to take further proofs. Filed August 15, 1898. S. F. B. Gillespie, deputy clerk.

68 *Tender by U. S. of Depositions Taken de bene esse.*

In U. S. District Court, Eastern Division, Southern District of Georgia.

THE UNITED STATES OF AMERICA
vs.
STEAMSHIP "ADULA," ETC.

And now comes the United States of America, by Marion Erwin, and, by way of counter-showing to the motion of the Atlas Steamship Company for an order to take further proofs, and tenders for

the consideration of the court on the question of allowing such order the depositions of Lieut. Edwin A. Anderson and Seamen Ellenberg and Gill, members of the prize crew, taken *de bene esse* in said cause, particularly to the points (1) of the establishment of the actual blockade of Guantanamo bay on June 8th, 1898, by the American warships under orders of Admiral Sampson; (2) as to the position of the Adula when captured, and that she was within the three-mile limit, and was proceeding to enter the bay, and was in cannon shot of the American warships before she could see them, and was proceeding right on in when she was hailed by the Vixen and ordered in, it being then too late for her to turn back and escape capture; (3) as to the actual and continuous blockade of Cienfuegos, Santiago, and Guantanamo; (4) as to the personal delivery on May 9th by Lieut. Anderson to the captain of the Adula of a copy of the President's proclomation of April 22nd, 1898, as to blockade of Cienfuegos. This is, however, admitted in the motion of claimants.

August 9, 1898.

MARION ERWIN,
U. S. Attorney.

Let the above motion be entered of record.
August 10, 1898.

EMORY SPEER,
U. S. Judge.

Endorsement: In U. S. district court, eastern division, southern district of Georgia. United States *vs.* The "Adula," &c. Tender by United States of depositions of Anderson, Ellenberg, and Gill, taken *de bene esse*, as counter-showing to motion of claimant for new proofs. Aug. 9, '98. Filed August 15, 1898. S. F. B. Gillespie, deputy clerk.

69 *Order Denying Motion of Claimant to Take Proof.*

United States District Court for the Eastern Division of the Southern District of Georgia.

THE UNITED STATES
vs.
THE STEAMSHIP "ADULA," &C.

The above-stated motion of the Atlas Steamship Company to take further proof came on to be heard upon the pleadings and proofs already in, and upon the affidavit of Robert Gemmell, and the statement of W. P. Forwood, annexed thereto, and the affidavit of W. P. Forwood of July 14, 1898, and exhibits thereto, and the answer of the United States filed to said motion, and upon the testimony of Edwin A. Anderson, Ellenberg, and Gill, taken *de bene esse*, tendered by the U. S. attorney as a counter-showing thereto, to the introduction of which the claimant objected, and for the

purpose of the hearing upon this motion the court has considered the allegations in said statement of W. P. Forwood attached to Gemmell's affidavit as if said Forwood had testified thereto on depositions regularly taken, and giving due weight to the same in connection with the other evidence in the case, and the court being of the opinion that the evidence as it stands is not susceptible of any satisfactory explanation, and, on comparing the proof proposed to be brought forward with that already in the cause, the court being of the opinion that the legal effect of the facts before the court cannot be varied by the circumstances of explanation offered on said motion, it is therefore adjudged, ordered, and decreed that the said motion of said claimant to take further proof be, and the same is hereby, denied.

The clerk is directed to file all the papers used before the court on this hearing and this order as a part of the record for use in case of an appeal.

In open court, August 15, 1898.

EMORY SPEER, *Judge.*

Endorsement: In U. S. district court, eastern division, southern district of Georgia. United States *versus* Steamship "Adula," &c. Order denying motion for order to take new proof, &c. Filed August 15, 1898. S. F. B. Gillespie, deputy clerk.

70 *Decree for Sale.*

In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

UNITED STATES OF AMERICA *vs.* STEAMSHIP "ADULA," ETC. } Libel *in Rem.* Prize.

It appearing to the court (that the prize property in the above-stated cause has been condemned by the judgment and decree of this court, and) that although the court has caused an appraisement of said vessel and other prize property to be made, and the same was appraised at eighty thousand dollars, and that said property is liable to deteriorate or depreciate, and that the Atlas Steamship Company, the only claimant appearing on the return day of the libel, has formally declined to give the stipulation for the release of said Adula from custody, and through its counsel has requested that the sale of the property shall proceed with expedition, in which request libellants, through their solicitor of record, join. it is considered, ordered, and decreed as follows: That the steamship Adula, her engines, boilers, tackle, apparel, and furniture (which has been condemned as lawful prize of war to the United States by the decree of this court rendered July 28, 1898), shall be sold at public outcry before the court-house door of the United States, at Savannah, Georgia, between the hours of 10 a. m. and 4 p. m., on the 29th day of August, 1898, under the supervision of the mar-

shal of the United States for the southern district of Georgia, by an auctioneer to be named and employed by the Secretary of the Navy, and having the qualifications provided by the statute in such case made and provided.

Before said sale the marshal shall cause a full catalogue and schedule of the said property to be prepared and circulated, and a copy of each shall be returned by the marshal to the court in this cause. The marshal shall cause said sale to be advertised fully and conspicuously in the Savannah Morning News, the Savannah Press, and the New York Journal of Commerce in at least five issues of said newspapers, the first appearance of said advertisement in said respective papers appearing not less than ten days prior to said sale, and said advertisement to give a brief description of said steamship. The marshal shall also advertise said sale fully and conspicuously by posters and shall, at least five days before the
71 sale, serve notice — A. E. K. Benham, prize commissioner, and shall allow all proper inspection of said property to be sold.

Said property shall be sold as a whole and no bid for a less sum than fifty-five thousand dollars shall be accepted. The proceeds of said sale shall be deposited in the registry of the court, subject to the further order of the court. The purchaser shall pay ten per cent. cash and the balance of the bid in twenty days from the date of the sale, and for failure to pay said balance at or before said time limited the said ten per cent. cash payment shall be forfeited as stipulated damages in the nature of demurrage.

In open court, August 15, 1898.

EMORY SPEER,
United States Judge.

Marshal's Return.

U. S. marshal's office, eastern division, southern district of Georgia.

SAVANNAH, GA., *August 29th*, 1898.

1. In obedience to the within decree I beg to report as follows and certify that on this date, at 12 o'cl'k noon, under my personal supervision, the steamship "Adula" and all her appurtenances was put upon the block for sale to the highest bidder above the minimum price fixed in the decree by Charles H. Dorsett, auctioneer, appointed by the Hon. Secretary of the Navy; that he cried the sale until 12.25 o'clock p. m. and received no bid therefor, and then made announcement that bids would be entertained until 4 o'clock. No bids having been received at that hour, I declared the sale off until a further order of the court should be had in the premises.

2. Full catalogue and schedule of said property had been prepared, circulated, and published to the attending people and a copy of each has been filed in the U. S. district court.

3. I certify further that said sale was fully and conspicuously advertised by five (5) insertions each in the Savannah Morning News and the Savannah Press, in which appeared a brief description

of said steamship, the first of the said several advertisements appearing in the issues of said papers on the 17th and 19th instant respectively, such insertions being more than ten days prior to the sales day. An order for similar service was mailed to the N. Y. Journal of Commerce on the 16th instant, but no response has been received from its proprietor as to its fulfilment.

4. Notice was served upon Admiral A. E. W. Benham, prize commissioner, on the 19th August, 1898, by mail to his address in Washington city, and inspection of this property had been invited, through the public prints and verbally, to probable purchasers. Thorough examination of the ship, its engines, boilers, electric plant, and other appurtenances, had been made by experts and elicited favorable comments.

5. The sale was further conspicuously advertised by sending posters to U. S. marshals at prominent ports from Boston, Mass., to Galveston, Texas, with request that they be placed in public buildings and be otherwise distributed. Favorable replies have been received from some of these officers and are on file in my office.

August 30, 1898.

JOHN M. BARNES,
U. S. Marshal.

72 *Order for Marshal to Repair Machinery.*

In the U. S. District Court, Eastern Division, Southern District of Ga.

UNITED STATES
vs.
STEAMSHIP "ADULA," ETC. } Libel *in Rem.* Prize.

It being made to appear to the court that it is very necessary that the machinery of the steamship Adula should be cleaned and oiled to prevent a deterioration thereof, and it appearing to the court that the engineers of the said "Adula" are still in Savannah, and that they are better acquainted with said machinery than any other persons, it is ordered that the marshal employ such persons as may be necessary to do said work, at a cost not to exceed fifty dollars, giving the preference to said engineers of the Adula crew. The contract of insurance taken out on said vessel by the marshal on a valuation of fifty thousand dollars is approved.

August 10, 1898.

EMORY SPEER,
U. S. Judge.

Endorsement: District court of U. S., eastern division, southern district of Georgia. United States *vs.* Steamship "Adula," etc. Order for marshal to repair machinery. Filed August 15, 1898. S. F. B. Gillespie, deputy cl'k.

Marshal's Return.

U. S. marshal's office, eastern division, southern district of Georgia.

SAVANNAH, GA., *August 27th*, 1898.

In compliance with within order I have had two competent men employed—engineers and crew of S. S. "Adula" not obtainable, they all having left the city on the 13th inst.—to clean and oil machinery and engine of said steamship and otherwise clean the engine-rooms, at a cost of thirty-four dollars ($34), as evidenced by bills rendered and submitted for approval.

JOHN M. BARNES,
U. S. Marshal,
By CHARLES J. WHITE, *Deputy.*

73 *Petition and Order to Deliver Certain Articles to Capt. Yeats.*

In the District Court of the United States, Eastern Division of the Southern District of Georgia.

UNITED STATES OF AMERICA
vs.
THE STEAMSHIP "ADULA."

To the Honorable Emory Speer, judge of said court:

The petition of R. W. Yeats respectfully shows:

That he was master of said vessel at the time of her seizure, and that among the papers and articles seized and now in charge of the clerk of this court are two pocketbooks belonging to petitioner and one letter written by petitioner to his wife, said letter and pocketbooks not having been used in evidence. Petitioner shows that said articles are not valuable to the court, and that petitioner desires that they be returned to him.

Wherefore petitioner prays that your honor may pass an order requiring said clerk to deliver said above-named articles to your petitioner.

GARRARD, MELDRIM & NEWMAN,
Petitioners for Proctor.

The above application I heartily endorse and recommend that the order prayed for be granted.

This 11th day of August, 1898.

WILLIAM R. LEAKEN,
Ass't U. S. Att'y.

It appearing to the court that there are in charge of the clerk of this court two pocketbooks and one letter written by Captain Yeats to his wife, which articles are the property of the said Captain Yeats and are immaterial in this case, and the assistant district attorney having recommended their delivery over to Captain Yeats,

it is ordered that the clerk of this court deliver to Captain Yeats the said above-mentioned articles.

This 12th day of August, 1898.

EMORY SPEER, *Judge.*

Endorsement: In the district court of the U. S., eastern division, southern district of Georgia. United States *vs.* Steamship "Adula." Application and order for delivery of certain articles to Capt. R. W. Yeats. Filed in clerk's office August 15, 1898. S. F. B. Gillespie, D. C.

74 *Affidavit and Order to Deliver Personal Property to Officers of Ship.*

THE UNITED STATES OF AMERICA
against
THE STEAMSHIP "ADULA."

UNITED STATES OF AMERICA,
Southern District of New York.

Robert Gemmell, being duly sworn, deposes and says:

The liquors and stores in the bar of the steamship Adula do not belong to the Atlas Steamship Company, but do belong to the captain, who has charge of that business. The chronometer also belongs to the captain and not to the company. In the present case, I understand that Captain Walker, who commanded the Adula on her previous voyage, left his chronometer on board. The piano on board does not belong to the company. My understanding is that this is the property of the officers of the steamer.

R. GEMMELL.

STATE OF NEW YORK,
City and County of New York, } *ss:*

Sworn to before me this eighth day of August, 1898.

ELLIS OWENS,

[SEAL OF NOTARY.] *Notary Public, City & County of N. Y.*

In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

UNITED STATES OF AMERICA
versus
STEAMSHIP "ADULA," ETC.

This court having heretofore made an order that the personal property of the captain, officers, and crew of the steamship Adula (exclusive of letters and papers) be restored to them, and it appearing to this court by the affidavit of Robert Gemmell that the piano, the liquors and stores in the bar, and the chronometer do not belong to the Atlas Steamship Company, but do belong to the persons hereinafter mentioned, it is, after hearing counsel for the parties,

ordered that the marshal of the United States for the southern district of Georgia and his deputies and whoever he has placed in custody of the said property deliver to Robert William Yeats, captain of said Adula, his chronometer and the stock of liquors and stores in the bar of said steamer; that said marshal and his deputies and custodians aforesaid deliver to Garrard, Meldrim & Newman the chronometer on said ship belonging to Captain Walker, her late captain, to be forwarded by them to him, and that said
75 marshal and his deputies and custodians aforesaid deliver the piano on said ship to said Robert William Yeats, to James Clarkson, and to James C. Williamson, officers of said steamship, for the benefit of the officers owning the same.

Dated August 10, 1898.

EMORY SPEER, *Judge.*

Endorsement: U. S. district court, southern district of Georgia. United States *vs.* Steamship Adula. Order for delivery of personal property to captain, &c. Filed in clerk's office August 15, 1898. S. F. B. Gillespie, deputy clerk.

Marshal's Return.

U. S. marshal's office, eastern division, southern district of Georgia.

SAVANNAH, GA., *August* 11, 1898.

By virtue of above order, I have this day delivered the following articles from S. S. "Adula," to wit:

One chronometer to Messrs. Garrard, Meldrim & Newman.

One chronometer to Capt. Robert William Yeats.

All stout (12 bottles) to Hunter, Pearce & Battey, as per order, and sixteen (16) cases whiskey to M. Fersts' Sons & Co., as per receipt, and on August 12th, 1898, in continuation of delivery of articles, J. Clarkson, act'g chief officer, took possession for captain and officers of one piano, as per receipt.

The return of—

JOHN M. BARNES,
U. S. Marshal,
By CHARLES J. WHITE, *Deputy.*

Dated August 13th, 1898.

76 *Petition and Order to Deliver Certain Articles to Captain Walker.*

In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

UNITED STATES OF AMERICA
versus
THE STEAMSHIP "ADULA."

To the Honorable Emory Speer, judge of said court:

The petition of —— Walker respectfully shows that he was formerly master of said vessel; that on board are certain articles, to

wit, one quadrant, one spyglass, one barometer, several charts, one electric fan, which are the personal and private property of petitioner; that said articles were omitted in the order passed by the court on the 10th day of August, requiring the delivery over of the personal effects of the several officers by the marshal to the respective owners, and that same were inadvertently omitted from the application for said order. Petitioner further shows that, although said articles are of immaterial value as regards said above-named suit, yet he desires to obtain the same, and that the marshal in charge of said vessel refuses to deliver them unless an order is obtained from your honor naming them specifically.

Wherefore petitioner prays that your honor may pass an order requiring said marshal to deliver said above-named articles to your petitioner.

GARRARD, MELDRIM & NEWMAN,
Proctors for Petitioner.

GEORGIA, }
Chatham County. }

Personally appeared Robert William Yeats, who upon oath deposes and says that he was master of the steamship "Adula," now in the port of Savannah as a prize of war; that on board said vessel are the following articles, to wit: One quadrant, one spyglass, one barometer, several charts, one electric fan, which are the personal and private property of Captain Walker, who was formerly master of said vessel; that said articles were omitted in the order passed by the court on the 10th day of August, 1898, requiring the delivery over of the personal effects of the several officers by the marshal to their respective owners; that same were inadvertently omitted from the application for said order; that affiant gave information
77 to the attorneys representing the claimants and inadvertently omitted from his statement to them the said above-named articles.

Deponent further says that he knows the said above articles to be the property of Captain Walker personally.

R. W. YEATS.

Sworn to and subscribed before me this 11th day of August, 1898.

JOHN G. SESSOMS,
Notary Public, Chatham Co., Ga.

Order.

It appearing to the court that there are on board of the steamship Adula certain articles, to wit, one quadrant, one spyglass, one barometer, several charts, and one electric fan, which are the personal and private property of Captain Walker, formerly master of said vessel, and that said articles were omitted in the order passed on the 10th day of August—

It is ordered that said articles be delivered to Gerrard, Meldrim &

Newman by the marshal in charge of said vessel, to be by them forwarded to the said Captain Walker.

This 12th day of August, 1898.

EMORY SPEER, *Judge.*

Marshal's Return.

U. S. marshal's office, eastern division, southern dist. of Georgia.

SAVANNAH, GA., *August* 13, 1898.

In obedience *with* the above order, I have this day, by request of Messrs. Gerrard, Meldrim & Newman, delivered to Captain Yeats, late commander of S. S. Adula, in person, one barometer, one sextant, one spyglass, one electric fan, and a number of charts, as evidenced by receipts hereto attached.

JOHN M. BARNES,
U. S. Marshal,
By CHARLES J. WHITE, *Deputy.*

Endorsement: District court of the United States, eastern division, southern district of Georgia. United States *versus* Steamship Adula. Application and order for delivery of certain articles to Captain Walker. Filed in clerk's office August 15, 1898. S. F. B. Gillespie, deputy clerk.

78 *Opinion of the Court.*

In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

THE UNITED STATES
vs.
THE STEAMSHIP "ADULA," ETC. } *In Rem.* Prize.

Mr. Marion Erwin, U. S. attorney, and Mr. W. R. Leaken, assistant U. S. attorney, for the United States.

Messrs. Gerrard, Meldrim & Newman and Mr. Everett P. Wheeler, proctors for the claimant.

AUGUST 13, 1898.

SPEER, *Judge:*

The Adula, British steamship, was on August 3, 1898, adjudged in the district court of the United States for the southern district of Georgia prize to the United States cruiser Marblehead and other United States vessels of war taking part in her capture while she was attempting to run the blockade established at Guantanamo bay.

The proctors for the Atlas Steamship Company, her claimant, served the following notice on the United States attorney:

"Take notice that upon the return day of the rule fixing the time and place for the hearing of the motion to take further proofs in this cause at Mt. Airy, in the State of Georgia, on the 9th day of

August, 1898, at 4 p. m., we will read the affidavits of Robert Gemmell and W. Peploe Forwood, of which copies are herewith served upon you, and that upon said hearing we will move this honorable court for directions respecting the sale of the 'Adula,' unless such directions shall previously have been given.

"We will also move this honorable court for an order staying the distribution of the net proceeds of the sale, and we will further apply at the same time for such other relief as may be just."

On the hearing of this motion the affidavit of Robert Gemmell was offered for the claimant. By virtue of this affidavit and the annexed statement of W. Peploe Forwood, who is the agent of the Atlas Steamship Company in Jamaica, it was sought to open the decree of condemnation granted after hearing the evidence taken *in preparatorio* and open the case for additional testimony.

79 The hearing upon the proceedings for condemnation was upon the evidence afforded by the examinations of the captured crew taken upon standing interrogatories, the ship's papers, and other evidence of a documentary character found upon the ship by the captors. This was done in conformity to the established rule in prize causes. "These papers and examinations *in preparatorio* constitute the only evidence on which the cause is first heard. If on this evidence there be doubt or justice require it, the court may in its discretion order further proof." Benedict's Admiralty, sec. 612 (*a*).

The rule is otherwise stated by Mr. Justice Story in the case of The Pizarro, 2 Wheaton, p. 240: "It is upon the ship's papers and the examinations thus taken in preparatory that the cause is in the first instance to be heard in the district court, and upon such hearing it is to judge whether the cause be of such doubt as to require further proof, and, if so, whether the claimant has entitled himself to the benefit of introducing it. If the court should deny such order when it ought to be granted or allow it when it ought to be denied and the objection be taken by the party and appear upon the record, the appellate court can administer the proper relief." It is true also that by the settled rule of prize courts "the *onus probandi* of a neutral interest rests on the claimant."

This rule is tempered by another, the liberality of which will not be denied, that the evidence to acquit or condemn shall, in the first instance, come from the ship's papers and persons on board, and where these are not satisfactory, if the claimant has not violated good faith, he shall be admitted to maintain his claim by further proof. But if in the event, after full time and opportunity to adduce proofs, the claim is still left in uncertainty and the neutrality of the property is not established beyond reasonable doubt, it is the invariable rule of prize courts to reject the claim and to decree condemnation of the property." Mr. Justice Story in Amiable Isabella, 6 Wheaton, page 77.

The charterer of the Adula on the voyage which resulted in her capture was Don Jose R. Solis. He testifies that he was a loyal subject of the Queen Regent of Spain. In answer to the first in-

terrogatory Don Jose testified: "I now live at Manzanillo, on the south coast, in the province of Santiago de Cuba.

80 "I have lived there ten years next January. I am a subject and a citizen of Spain and I owe allegiance to Spain. I am married; my family and wife reside at Manzanillo." He further testified that he frequently went into the country fifteen or twenty miles from the city, but after General Weyler came into the country he said: "I could not go in the country any more because I feared that General Weyler might suspect me of being an insurgent." Don Jose was in good standing with the Spanish government. The official card entitling him to travel as a loyal Spaniard was found in his possession, was signed by the municipal authorities at Manzanillo in 1897, and he himself testified that it was not necessary to obtain a new one. The Spanish consular authorities seem to have afforded him every facility for his operations, for as late as June 28, 1898, he received from the Spanish consul at Jamaica an endorsement of the bill of health obtained from the Jamaica authorities to enable him to prosecute this voyage. It is also in evidence that there was given to him on that day by the Spanish consul a passport authorizing him to take the Adula into the Spanish ports mentioned. He undertook to provide an efficient Spanish government pilot to conduct the ship safely into the ports of Manzanillo, Santiago, and Guantanamo. For this he was to pay for the vessel one hundred pounds per day for the first ten days of the voyage, and after that fifty pounds per day until she should return to the wharf at Kingston. The charter contained this further significant provision: "The company will give the option to the charterer for another similar voyage on similar terms provided the charterer gives the company twenty-four — notice after the arrival of the steamer at Kingston." It is, moreover, true that Yeates, who was captain of the Adula, testified: "As I understood it, as well as I can remember, we were to go to any other ports that the charterer designated and was not put down in the letter of instructions if he wished to go there. As I said before, if he wanted me to go to any other port except those specified in the charter-party, I was to go there." He further testified that if the trip ran beyond ten days that there was a special agreement made between Captain Forward, the agent of the ship, and Mr. Solis as to payment for this. In his answer to the 39th interrogatory, the captain of the ship also testified:

81 "The Adula's destination was to go to Guantanamo bay for refugees and then to Santiago and Manzanillo and such other places that the charterer may desire to go to after we had visited these ports."

It is true that Don Jose R. Solis denied this testimony and testified as follows: "If I was to state to the captain to go there he would say 'You have no right to direct me.' I did not have the right to direct them to any particular port."

With this allegiance and thus supported by Spanish authority, Don Jose chartered the Adula, and with this charter he left the harbor of Kingston, Jamaica, on the 28th day of June, 1898. With

the Adula he steamed away toward Santiago, and when in sight of the blockading fleet sheered off to Guantanamo, where in half mile of the entrance he was hailed, brought to, and directed into the harbor, where the Marblehead and other war vessels were lying by the Vixen, and shortly thereafter was seized by order of Commander McCalla, of the Marblehead.

While it is true that the Adula was owned by British subjects, it appears from the testimony of Don Jose that for all the purposes of this voyage, having been chartered by a Spaniard, she was a Spanish ship.

The authorities on this subject are as abundant as conclusive. That great admiralty judge, Sir William Scott, afterwards Lord Stowell, in Ranger, 6 Rob., 126, declared: "If the owner will place his property under the absolute management and control of persons who are capable of lending it in this manner to be made an instrument of fraud in the hands of the enemy, he must sustain the consequences of such misconduct on the part of his agent." In the Yonge Emilia, 3 C. Rob., 52, a neutral vessel was condemned because she appeared to have been altogether in the hands of merchants who were enemies and had been employed for seven voyages successively in the enemy's trade. In the Napoleon, Blatchford's Prize Cases, 296, reported in Federal Cases, 17 vol., case No. 10,012, it was held that even though the claimant was a loyal citizen of high character and a resident merchant of the city of New York, opposed strongly to the purposes of the Confederates, yet when by the acts of his agent with whom his vessel had been left she was placed in illicit employment, she must be condemned.

It is true that in the case last cited the ship was actually in the use of an opposing belligerant, but in principle the author-
82 ity is applicable, for here she was placed, as the court is satisfied from the testimony of the master and otherwise, in the absolute control of a Spanish subject, who was using her, as will presently appear, to run the blockade in the absence of blockading vessels, or by practicing upon the credulity of American commanders, he could do so with impunity. It is now sought by this motion, made long after Don Jose R Solis had testified, to open the judgment of condemnation and offer proof that while he, originally and before the people of Cuba were declared by joint resolution of Congress to be free and independent, owed allegiance to the Queen of Spain, yet that soon after the war broke out he left the island of Cuba, had taken no part in hostilities against the United States, nor been in any particular an enemy of the same, but, on the contrary, had done all in his power while he remained in Cuba to befriend and assist citizens of the United States who were still in Cuba, and that he cast his lot with the natives of Cuba and was desirous that a stable government should be established in said island under the auspices of the United States. It is clear to the court that this evidence is altogether irrelevant. There are doubtless now in the island of Cuba thousands of persons who were formerly Spanish subjects who entertain the political sentiments to which Don Jose wishes now to subscribe. The court, however,

would not be justified in permitting him to contradict his testimony given before the prize commissioners that he was a loyal subject of Spain, nor would it be specially commendatory of the credibility of Don Jose if in the distress of his country, when his personal interests may be involved, he is so ready to forswear his allegiance to the Queen Regent. Again we are assisted by the lucid announce-
83 ment of Mr. Justice Story in the Pizarro, *supra*, "Nor would the captured crew have been permitted to be re-examined in court. They are bound to declare the whole truth upon the first examination, and if they fraudulently suppress any material facts they ought not to be indulged with an opportunity to disclose what they please or to give color to their former statements after counsel has been taken and they know the pressure of the cause. Public policy and justice equally point out the necessity of an inflexible adherence to this rule." Here we may say that Don Jose is to be treated as one of the crew. While he was charterer of the vessel, and appears to be a Spanish subject of large influence and presumably of large means, he is entered upon the ship's books as supercargo, and it was in part to the testimony of the supercargo in the Pizarro that the animadversions of Justice Story were directed. In the Gray Jacket, 5 Wall., p. 368, Mr. Justice Swayne, speaking for the Supreme Court, used this language: "This is not a proper case for the order for further proof. The order is always made with extreme caution and only when the ends of justice clearly require it. The claimant forfeited all right to ask it by the guilty concealment in his first affidavit. * * * The allowance would hold out the strongest temptation to subornation of perjury. See also The Rapid, 1 Gall., 295; 20 Federal cases, No. 11576; The Euphrates, 8 Cranch, 385; The Hazard, 9 Cranch, 205.

It seems clear from the evidence that the control of the Adula by the enemy is plainly shown in the first instance by Solis' testimony, her charterer, her control by him, and the option for further voyages given him, and that further proof on this subject
84 should not be allowed. The Adriana, 1 Rob., 313; The Romeo, 6 Rob., 351; The Sarah, 3 Rob., 330, cited in II A. & E. Ench. Law, p., 489.

It appeared also from the proof *in preparatorio* that the business of Don Jose was suspicious in the extreme. He states that his object was simply to bring off passengers "for the sake of humanity." In answer to the 26th interrogatory he testified: "My calculation was, supposing the admiral allowed me to go into Santiago or Guantanamo and bring my family from Manzanillo, that I could bring four hundred passengers at sixty dollars each, making twenty-four thousand dollars, and my idea was to make the trip in six or seven days; supposing it took me ten days, it was nineteen thousand dollars net profit. I had done it before with two English schooners; once I took one hundred and thirty from Manzanillo and Montejo bay." In addition to this not altogether disinterested humanitarianism, it appeared from numerous letters found on the person of Don Jose and in his state-room that he was carrying on a large business in the shipment of supplies, and, as he admits, he

was plying with schooners to and from Cuba, and the presumption is fair that he was engaged in continuously running the blockade. It seems clear that for more than two months he had been engaged in the hiring and purchase of ships and in the conveyance of supplies from Jamaica to Cuban ports and at a time when these ports were invested by the American fleet. The claimant now wishes to show that Solis was not engaged in trade with blockaded ports or with any ports in Cuba where intercourse was unlawful, but it may be said that Solis had the ample opportunity to give
85 the explanation of these letters in his testimony previously taken, and in fact did testify with regard to all the letters and telegrams found on his person and in his state-room, and it does not now appear that he should be permitted to add to his testimony. In addition to this, he bore many letters relating to trade and commerce, the conveyance of which through the blockade, especially by a Spanish subject, was a violation of the laws of neutrality. As stated by Sir William Scott in The Rollo, 6 Rob., 366, "A blockade is a naval circumvallation intended to prevent and cut off all communication with the port that it encloses and to cause an entire suspension of its commerce," 1 Duer on Ins., sec. 24, p. 247. And Justice Washington, in the case of The Tulip, 3 Wash. C. C., 181; 24 Fed. Cases, No. 14234, declares: "The same principle of the maritime law which makes that species of trading which consists in the mere intercourse of buying and selling an offense, with stronger reasons for the public safety must condemn the act of conveying intelligence to the enemy. In neither case does the condemnation proceed on the ground of the party being actually an enemy, nor of the property being actually owned by an enemy, and therefore the maritime law treats the property as if it belonged to an enemy."

It is also offered to prove that the official blockade of the three ports—Guantanamo, Santiago, and Manzaniilo—was not declared by the British government at Jamaica until the 6th of July, 1898. This fact can possess no significance. The United States attorney in resisting the motion calls the attention of the court to the
86 testimony of Lieut. Anderson, of the Marblehead, in his depositions taken *de bene esse*, to the effect that an actual and effectual blockade of Guantanamo bay and harbor was established by the Marblehead under Commander McCalla and other United States warships under Admiral Sampson on June 8, 1898, and that this was continuously and effectually maintained to the capture of the Adula. He testifies that an active and effectual blockade of Santiago de Cuba was established by Commodore Schley on May 24, 1898, with the American warships which were holding the fleet of Admiral Cervera in that harbor, and that this investment was rigorously maintained to the day of the capture of the Adula. He testifies also to the actual and effectual blockade of Cienfuegos harbor under the President's proclamation of April 22, 1898, and that on May 9, 1898, while off Cienfuegos, he actually delivered to the Adula a copy of the President's proclamation of April 22nd. This testimony was not before the court on the hearing of the evidence taken *in*

preparatorio, nor is it essential to the determination of this question now, although formally submitted by the United States attorney as cause why the case should not be reopened. It appears from the testimony of Captain Yeats before the prize commissioners that "at the time we went to Guantanamo it was apparently under an order of blockade. We passed one vessel," he testifies; "I think it was the Vixen. He fired a gun. I stopped immediately, and he told me to proceed. He did not stop his engines at all; just steamed right on by. Captain Forwood told me I should see the vessels of war around there. When the Vixen hauled me we were about half a mile from the entrance to the bay and about four miles from where we anchored. It was only after I had anchored that I was acquainted with the blockade of
87 the harbor." Horatio Morris, one of the crew of the Adula, testified that "at that time we went up to the mouth of the harbor, and at that time, when we got to Guantanamo, we found the warships were blockading the harbor. A small cruiser, the Vixen, ran up across our bow, and the captain of the cruiser asked us, "Didn't you sight the warships down to Santiago?" and the captain said, "Yes," and the captain stopped and he said, "Didn't you hear that Guantanamo was blockaded?" and our captain said, "Yes." Then he said, "You can proceed on." I heard about the blockade in Kingston, but after leaving Kingston, until we met the cruiser, I never heard about it any more." Captain Yeats also testified that he expected to be stopped when he approached Santiago. The log book of the Adula shows that he was given a copy of the President's proclamation of blockade at Cienfuegos on May 9th. Solis, the charterer, testified that he was told on board the Adula that the blockade of Guantanamo was published on the 27th, the day before, but he had not heard of it before he left Kingston, but he admits that while in Kingston he heard there was some warships at Guantanamo. There were several copies of the "Kingston Gleaner" on board the Adula, all of which spoke of the American operations, both military and naval, about Santiago and Guantanamo. Solis admitted that he knew that Guantanamo was invested by the American marines. While Mr. Solis testified that he knew but little of international matters, he must have known something, for he was French vice-consul at Manzanillo. Besides, the letters of instructions issued to the ship of which he was charterer contains unequivocal notice of the blockade, and Mr. Solis himself testifies that Mr.
88 Dent, the American consul at Santiago, on the 28th of June, prior to his departure on this voyage, gave him notice. In answer to the 12th interrogatory, he testified: "I explained to Mr. Dent the idea of my voyage. He told me he was sorry he could not give me the passport I wanted, because he was not allowed to give such passports unless he had permission from the American authorities in Washington." He further stated, "I went to Consul Dent's office and asked permission to go to these points. He asked me whether I had the consent of the Spanish consul. I told him I had it. He then said to me he was sorry he could not give me such permission. Mr. Dent told me not to go. He told me not to go,

and I assured him I was not going for anything wrong." It is further in evidence that Consul Dent warned Mr. Forwood, the agent of the ship at Kingston, of the existence of this blockade. It is true that Mr. Forwood now offers to testify that this was given in a very informal manner, but he himself admits that Dent used this language, "Well, Forwood, I would not advise you to let the ship go. They won't let her into Guantanamo, and they will be watching for her." It appears from the log book of the ship that she did not sail until an hour after the date of this interview between the American consul and the ship's agent at Kingston. The Spanish charterer of the ship and the agent were thus both given actual notice of the danger she incurred, and it otherwise appears that the charterer also communicated to the agent what the consul had told him. Notwithstanding this, the Adula was thus placed at the disposal of the Spanish subject to communicate, if he could, with the Spaniards and Spanish subjects by crossing the American lines by means of access to a
89 blockaded port. "It is established as a settled rule that a vessel which has full knowledge of the existence of a blockade is liable to capture if she attempts to enter the blockaded port in violation of the blockade regulations, and that it is no defense against an arrest made under such circumstances that the vessel arrested had not been previously warned of the blockade, nor that such previous warning had not been endorsed on her register." The Admiral, 3 Wall., 615. Notice is sufficient if the proof shows that it was known in a general way. Stephen Hart, 22 Fed. Cases, case 13364. And in Duer on Insurance it is stated: "Proof of the actual knowledge of the party at the inception of the voyage supersedes in all cases the necessity of a warning, nor is it of any importance by what means or in what form he received the information if the communication made to him is credible in its nature. He is not permitted to aver that he placed no confidence in a communication that had just claims to his belief." "And even in the absence of actual notice, since the proof was sufficient to show notoriety of the fact that a blockade existed at the port to which the voyage was commenced, it raises a presumption by which the party charged with the offense may be concluded." Duer on Ins., p. 661. Even though the owners of the Adula acted in good faith, their vessel would be none the less liable to forfeiture. The law upon this subject is also plain. In the case of The Shepherdess, 5 Rob., 252, Sir William Scott announces this rule: "No excuse is ever permitted for the conduct of the neutral master who persists in his voyage to a blockaded port in defiance of sufficient and legal warning.
90 His conduct may in no degree be imputable to the owners; yet their innocence affords no protection to their property." 1 Duer on Ins., sec. 49, p. 676. It is elsewhere stated: "It is a settled principle that if the owner has not anticipated a violation of the public law, the fate of *their* vessel with respect to an infraction of that law must depend upon the conduct of the agent with whom *they have* entrusted its management." Jecker *v.* Montgomery, 18 How., 119; The Bermuda, 3 Wall., 556. With the purpose then in his mind to enter Santiago, Guantanamo, or Manzanillo, or other

Spanish ports, whether they were blockaded or not, this Spanish charterer brought the Adula out of Kingston harbor. The offense was committed at the inception of the voyage. The Stephen Hart, 22 Federal Cases, No. 13364. And the Adula was subject to seizure from the time of sailing with the intent to run the blockade. The Circassian, 2 Wall., 135. Sailing from a neutral port, with intent to enter a blockaded port, with knowledge of the existence of the blockade, subjects the vessel and generally its cargo to capture and condemnation. *Idem*, 151. Nor does it matter that the Adula was merely in ballast. Duer on Ins., p. 671, sec. 46. It was of especial importance to the American authorities at that time that there should be no communication between the beleaguered forces at Guantanamo, Santiago, and the vicinity *with* the outside world, and this the Adula might well have effected by means of its Spanish charterer—ostensibly supercargo. Nor does the excuse that it was the purpose of Don Jose R. Solis to approach the American fleet and ask permission of the admiral to take off refugees avail the ship. Indeed, it may well be doubted from the evidence if he had any such purpose. It is plain that when
91 he saw the fleet off Santiago he did not approach it, but steamed away to Guantanamo, where at that time no blockading vessels were visible. The rule is, however, that "neutral ships, although not ostensibly destined to the blockaded port, cannot innocently place themselves in a situation which would enable them to violate the blockade at their pleasure and with impunity. The intention of the party in such cases to violate the blockade is a necessary and absolute presumption." Indeed, it would be difficult to see how a blockade could be enforced if it were otherwise, but the authorities avoid the necessity of further discussion. "The intention to break the blockade is to be presumed from the position of the ship when captured. She knew of the blockade when she sailed. She had no just reason to suppose it had been discontinued. Her approach, under these circumstances, to the mouth of the blockaded port for inquiry was itself a breach of the blockade and subjected both vessel and cargo to seizure and condemnation." The Cheshire, 3 Wall., 235; The Delta, 7 Fed. Cases, 3777. Nor does it matter that the sailing instructions given the master directed him to approach the blockading vessels and ask permission to enter and to refuse to do so unless this permission was granted. The Delta, 7 Federal Cases, *supra*. The language of Mr. Justice Field in the case of The Cheshire, 3 Wall., 236, is very apposite: "If approach for inquiry were permissible, it will be readily seen that the greatest facilities would be afforded to elude the blockade. The liberty of inquiry would be a license to attempt to enter the blockaded port, and that information was sought would be the plea in every
92 case of seizure. With a liberty of this kind the difficulty of enforcing an efficient blockade would be greatly augmented. If information be honestly desired, it must be sought from other quarters. In the case of the James Cooke, the ship was captured at the entrance of the Texel and the court applied this rule, observing that the approach of the ship to the mouth of a blockaded port,

even to make inquiry, was in itself a consummation of the offense and amounted to an actual breach of the blockade." If it be conceded that the Adula simply intended to enter Guantanamo, and that Guantanamo was simply invested and not blockaded, nevertheless her course subjected her to forfeiture. "It seems a just inference from the decisions," said the author of Duer on Insurance, page 670, paragraph 44, "that where the blockade has been constituted simply by the fact of an investment, although its existence was known at the port of departure previous to the sailing of the neutral ship, she may clear out provisionally for the blockaded port, but that in this as is the former cases the inquiry upon the result of which the right to complete the voyage must depend must be made at a port of the blockading State or of a neutral power. I see no reason to doubt that the prohibition to proceed to the mouth of the blockaded port embraces all cases of a previous knowledge, from whatever source the knowledge may have been derived, and that in all its violation is subject to the same penalty."

It is unfortunate for the claimant that the Adula had been previously engaged in several ventures, some of which evinced a total disregard of the blockade established by the American commanders. It is indisputable that with full prior notice of
93 the blockade of Cienfuegos, both by the President's proclamation and by verbal communication, the Adula had without permission of the American authorities run in a supply of provisions into that place on June 15th. In answer to the 41st interrogatory Captain Yeats testified, "I was on board when we went to Cienfuegos. I was first officer then—known as first mate. We went to Cienfuegos for refugees, and, as I said previously, we had a permit from Consul Dent, United States consul at Kingston, Jamaica. That was on the first two trips. On the first occasion we were stopped by the Marblehead (May 9th; see log) and on the second time we were stopped by the Castine (May 25th; see log). They ordered us to proceed to the Brooklyn, flagship. On both of those occasions we were allowed to pass after talking to the captain for some considerable time. On the first and second occasions we had permission to enter Cienfuegos, but on the third visit to Cienfuegos (June 19, 1898; see log) we had no permission that I know of. On that occasion we were not stopped, because there was nobody to stop us. The third trip was made, I think, about the 14th of June. On that trip we had some stores. Captain Walker was in charge at that time. The Adula was chartered at that time by somebody in Cienfuegos. I do not know whether it was by a Spanish subject or not. I know that Cienfuegos was supposed to be blockaded, but we had not seen any ships there for a considerable time, and that is the reason we went." The Adula then was a blockade-runner. A blockade once regularly proclaimed and established will not be held to be ineffective by continued entries in the log books, supported by testimony of the officers of the vessel seized, that
94 the weather being clear no blockading vessels were to be seen off the port from which the vessel sailed. The Adromeda, 2 Wall., 481. This is precisely the Adula's case. It appears also

from a letter of Captain Yeats to his parents which was taken on board the Adula after her seizure that he knew the ship was engaged in running the blockade; he had expected seizure, and it had occurred, and he complains of his hard luck to be in command at the time the vessel was seized. He also makes a statement which is strongly indicative of the fact that even after the Adula had been permitted by permission of the Washington authorities to enter Cienfuegos for the purpose of taking off refugees that she carried out the private secretary of General Blanco, governor general of Cuba. Warned off again and again by the American authorities, she persisted in her ventures. Her charterer, Don Jose R. Solis, was a man of remarkable intelligence, who we have seen was French vice-consul at Manzanillo—a Spaniard who spoke English so well that no interpreter was used by the prize commissioners in taking his testimony. How important it was, therefore, to prevent him from communicating with the garrison at Guantanamo. He had in his state-room and in his personal possession a large number of letters of a personal nature and relating to the conduct of business then in progress between the people of Cuba and those outside. He was the possessor of an official passport, given him by the Spanish authorities, authorizing him to take that ship into any Spanish port. It is true that this was not found at the time of the capture of the vessel and has not been delivered up, but there was ample time for its destruction. It is now offered to prove by Don Jose that this passport was
95 delivered to Commander McCalla, but he has already testified to that fact, and Lt. Anderson in his affidavit, made in accordance with the statute, declares that he turned over all the papers seized by him under the direction of Commander McCalla to the prize commissioners. He made a complete schedule by name of the different papers, and swears that all of them were delivered without suppression or fraud to the prize commissioners. The disappearance of this passport for the ship to any Spanish port rather than the passport itself is therefore of greatest significance as affecting her character, and the production of a certified copy from the Spanish consul would not throw any light upon the controversy. Spoliation or destruction of a paper of this character is strong proof of guilt. The Pizarro, 2 Wheaton, 227; The St. Lawrence, 8 Cranch, 434; The Fortuna, 2 Wheaton, 161; The Fortuna, 3 Wheaton, 236. Indeed, it may not be without significance that the clearance of the ship herself was simply for Guantanamo, when, according to the testimony of Solis, she was chartered for Santiago and Manzanillo, and, according to the testimony of Yeats, she might have gone to any other Spanish port. There is strong presumptive evidence that he carried other official communications with him. Among the letters he carried was one dated Kingston, June 28th, from O. Fons to Sr. Don Jose Marmion, from which the following is an extract: "After six weeks, having been unable to write you on account of the presence of the American squadron before that port, today I am told with great secrecy that Mr. Solis, of Manzanillo, with the

steamer Adula, English, is going to run the blockade and
96 carry provisions or take out passengers. I take this opportunity with great pleasure of hearing from you and of my house." Thus in the voyage to Cienfuegos, then blockaded, carrying in provisions to a Spanish consignee; in the voyage to Guantanamo, Santiago, and Manzanillo, all blockaded, and other ports not named, conveying messages on Spanish commerce and avowedly intending to make a large profit for himself, a Spanish subject, from having options to make another similar voyage on similar terms, provided the charterer gives the company twenty-four hours' notice after the arrival of the steamer at Kingston, can it be doubted that the Adula was under Spanish control and engaged in the Spanish trade, in utter disregard of the blockade established by the President and by the commanders of the American vessels? Any humanitarian purposes Mr. Solis may have entertained could not properly have been accomplished without the supervision of the American commanders.

Upon careful reconsideration of the record, assisted, as the court has been, by the exhaustive preparation and admirable arguments on these interesting topics by the United States attorney, Mr. Marion Erwin, and Mr. Everett P. Wheeler, proctor for claimant, I am satisfied of the correctness of the decree for condemnation, and I am clearly of the opinion that the additional evidence offered to be taken in connection with that motion to open the decree and admit additional testimony is therefore overruled and denied.

Filed in clerk's office August 18, 1898.

S. F. B. GILLESPIE,
Deputy Clerk.

97 *Catalogue and Schedule of Prize Steamship "Adula."*

The steamship "Adula" is a three-masted screw steamer of 772 tons gross and 372 net tonnage under deck. Her dimensions are: Length, 212″ 5; beam, 29″ 1, and depth of hold, 12 feet. She was built in 1889, at Belfast, of steel and iron, and has four bulkheads for water ballast, and coal-bunkers to contain a sufficient supply of coal for an ordinary voyage. She registered April, 1892, as A 00 A 1.

On the forward hurricane deck is situated the pilot-house, in which is located the steering apparatus, and contains a large compass well inclosed in brass housings; also an indicator of the ship's bearings.

Upon the after hurricane deck are three lifeboats swung upon davits, all of sufficient capacity to transport passengers and crew should occasion necessitate such use. These boats are in good order and supplied with necessary apparatus for sailing and rowing.

Upon the bridge are fastened four large life-preservers, easy of access, and upon the main deck are two others of similar size.

In the bow, upon the main deck, are two anchors and anchor chain, with a steam winch and derrick for hoisting same.

Upon this main deck is situated the forward house, divided in thirteen state-rooms, the most forward one being designated as captain's room, in which is stationary a large desk, wardrobe, and sleeping berth, and contains one nautical instrument, two compasses, one spy-glass, one trumpet, and two clocks.

The remaining twelve rooms are arranged for accommodation of 48 passengers, each room containing two stationary and two temporary berths and the usual accessories, such as wash-stand, mirror, and lamp.

Twenty-one life-preservers are distributed in these rooms.

Amidships, upon this deck, is the saloon and pantry, with access to the rooms below deck occupied by the steward and stewardess, and bath-rooms, water-closets, and linen-room. The pantry fixtures consist of lockers, shelves, racks, and dressers, and those in the saloon of two small stationary sideboards with mirrors, a clock and barometer over each; two dining tables 15 feet long, over which are suspended lamps and electric globes, sixteen revolving chairs, and along the sides stationary benches that can be converted into sleeping berths.

98 A medicine chest, fairly supplied with medicines, drugs, and bandages, is one of the saloon fixtures. The after house contains the kitchen, fitted with large cooking range, bake oven, and a large number of utensils. Next, aft of this, is the engine-room and boiler room; then next comes the officers' mess-room, with entrance to state-room on each side, and beyond the entrances to sailors' and firemen quarters on the deck below. In the stern of the steamer is an apparatus by which the vessel's bearings is regulated, its machinery connecting by rods and other means with indicator located in pilot-house on hurricane deck. There are two other steam winches and derricks on this deck, placed at the main and after hatches, for hoisting purposes and loading coal or other bulky freight.

Amidships, on the lower deck, are situated two state-rooms, designated for use of purser and carpenter, furnished like all other sleeping apartments. The center space between these rooms is fitted up with ice-house and closets.

A number of temporary sleeping berths (not enclosed) have been erected upon this deck; they were designed for occupancy by other than first-class passengers.

Engine.

The propelling power of this steamer is a triple-expansion engine, 18–30–49, with 33 inch stroke, and is pronounced by experts first class—in fine condition and good running order; boilers 2 and furnaces 6 in number are said to be in like good order.

Electric plant is located in engine-room and consists of one lighting machine, Crompton patent, No. 1690. It is a 60 kilowat, 100 volts, 85 amperes, capable of furnishing 175 incandescent lights. Switch-board is partly equipped with appliances of English manufacture and partly with Western Electro. Co., U. S. It is propelled

by one 35 h. p. high-speed engine, and the entire plant is apparently in good running condition. Conductors and globes are supplied to each room and to every part of the vessel.

The oil-room is adjacent to engine-room on lower deck and contains tools, lamps, and every material that is used by machinists and engineers in furtherance of their respective vocations.

99 A general store-room on forward lower deck contains quantities of paint, varnish, oil, waste, brushes, and such other materials as is requisite for burnishing and renovating parts of a vessel.

A quantity of hawsers, ropes, lead-lines, canvass, sails, and kindred articles supplies this steamer with every requisite, all being of good quality and ample in quantity for all purposes within a reasonable space of time; there are shovels, swabs, brooms, scouring brushes, fenders, etc., in the ship's furnishings, some of which have become useless from wear and breakage.

To provide against an outbreak or spread of fire, buckets always filled with water are accessible; pumps are located at certain points on the upper and lower decks, fire hose within reach of sufficient length to reach any part of the ship where such fire may be located.

100 *Schedule of Furnishings on Board Steamship "Adula" Appertaining to the—*

Stewardess' department.

97, ninety-seven, mattrasses.
30, thirty, mattrass covers.
80, eighty, pillows.
19, nineteen, bolsters.
66, sixty-six, pillow and bolster cases.
62, sixty-two, bed sheets.
19, nineteen, bed spreads.
3, three, woolen blankets.
54, fifty-four, towels.

Steward's department.

Glassware:

8, eight, fruit dishes.
8, eight, sherbert cups.
63, sixty-three, tumblers.
14, fourteen, decanters.
13, thirteen, wine glasses.
15, fifteen, finger bowls.

Crockery-ware:

8, eight, oval meat platters.
2, two, vegatable dishes.
12 oval (small) dishes.
129, one hundred and twenty-nine, assorted plates.

42, forty-two, coffee and tea cups.
60, sixty, saucers.
5, five, egg cups and 5, five, butter saucers.

Silverware:

2, two, soup tureens and 4, four, ladles; 1 gravy ladle.
10, ten, casters; four without cruets.
1, one, pickle stand and two scoops; 2, two, toast-holders.
1, one, tea urn; 1, one, ice pitcher.
15, fifteen, vegatable dishes; twelve without covers.
2, two, butter dishes and knives; 6, six, glass holders.
3, three, sugar bowls and two sugar tongs.
2, two, cream pitchers; 9, nine, napkin rings.
101 1, one, fish knife and fork; 3, three, trays.
$6\frac{1}{2}$ dozen forks, assorted; $4\frac{3}{4}$ dozens spoons, assorted.
$1\frac{5}{12}$ dozens mustard and egg spoons.
8, eight, nut-breakers; 7, seven, teaspoons.

Hardware:

5, five, dozens assorted knives; 3, three, carvers.
2, two, meat forks; 2, two, steels.

Additional to above detailed statement there is a lot of miscellaneous articles scattered all over the ship, including common chairs, tinware, brooms, buckets, door mats, crocus matting, carpet rugs, and strips of carpets that have been in use, some of them worn and almost useless.

JOHN M. BARNES,
U. S. Marshal,
By CHARLES J. WHITE,
Deputy U. S. Mar.

Endorsement: In the U. S. district court, eastern division, southern district of Georgia. The United States *vs.* Steamship "Adula." Catalogue and schedule. Filed August 23rd, 1898. S. F. B. Gillespie, D. C.

102 *Order Appointing Prize Commissioners.*

District Court of the United States, Southern District of Georgia.

In re Prize Commissioners.

Whereas it is provided under section 4621 of the Revised Statutes of the United States that the district court may appoint prize commissioners, not exceeding three in number, of whom one shall be a retired naval officer approved by the Secretary of the Navy and at least one of the others shall be a member of the bar of the court of not less than three years' standing and acquainted with the taking of depositions:

Now, therefore, it is ordered by the court that Edgar Denmark,

of Savannah, a member of this court of more than three years' standing and who is well acquainted with the taking of depositions, and Julian Schley, of Savannah, be, and they are hereby, appointed severally prize commissioners of this court, to have and exercise all the power and authority properly to be exercised by prize commissioners for the southern district of Georgia by virtue of the laws of the United States.

The court reserves the appointment of a third prize commissioner until a qualified naval officer shall be selected and shall be approved by the Secretary of the Navy.

April 23rd, 1898.

EMORY SPEER,
U. S. Judge.

Filed in office April 25, 1898.

S. F. B. GILLESPIE,
Deputy Clerk.

103 *Order Adopting Rules of District Court, So. Dist. of New York.*

In the District Court of the United States for the Southern District of Georgia.

In re Prize Rule.

It is ordered by the court that the rules of the district court from the southern district of New York for prize causes numbered from 1 to 53, inclusive, as published in Benedict's Admiralty, second edition, be, and the same are hereby, adopted and declared to be of force in prize causes in the southern district of Georgia as far as the same may be made applicable to prize causes which may arise in the southern district of Georgia, and with the exception that rule 38 shall be modified so as to require that all moneys brought into court in prize causes shall be forthwith paid into the registry of the court and deposited in the Merchants' National Bank of Savannah; also rule 49 is so modified that the court reserves the right to appoint such persons as the court may think proper to assess damages in the causes in said rule provided for.

April 23rd, 1898.

EMORY SPEER,
U. S. Judge.

Filed in office April 25, 1898.

S. F. B. GILLESPIE,
Deputy Clerk.

104 *Preparatory Interrogatories in Prize Cases.*

Standing interrogatories to be administered by a prize commission to all persons that may be produced as witnesses to be examined *in preparatorio* in relation to any ship or vessel, goods, wares, or merchandise which may be captured or taken as prize and brought into the southern district of New York.

Let each witness be interrogated to every of the following questions and their answers to each interrogatory be written down under his direction and supervision:

1. Where were you born, and where do you now live, and how long have you lived there? Of what province or State are you a subject or citizen and to which do you owe allegiance? Are you a citizen of the United States of America? Are you a married man, and, if married, where do your family and wife reside?

2. Were you present at the capture or taking of the vessel or her lading or any of the goods or merchandise concerning which you are now examined?

3. When and where was such seizure and capture made, and into what place or port were the same carried? Had the vessel so captured any commission or letters authorizing her to make prizes? What and from whom? For what reasons or on what pretence was the seizure made?

4. Under what colors did the captured vessel sail? What other colors had she on board, and for what reason had she such other colors?

5. Was any resistance made at the time of the capture, and by whom? Were any guns fired, how many, and by whom? By what ship or ships was the capture made? Were any other and what ships in sight at the time of the capture? Was the vessel captured a merchantman, a ship of war, or acting under any commission as a privateer or letter of marque and reprisal, and to whom did
105 such vessel belong? Was the capturing vessel a ship of war, a letter of marque and reprisal, or privateer, and of what force?

6. Had the capturing vessel or vessels any commission to act in the seizure or capture of the vessel enquired about and from whom, and by what particular vessel was the capture made? Was the vessel seized condemned; and, if so, when and where, and for what reason, and upon what account, and by whom, and by what authority or tribunal was she condemned?

7. What was the name of the vessel taken and of her master or commander? Who appointed him to the command of the said vessel, and where? How long have you known the vessel and him, and when and where did he take possession of her, and who by name delivered the same to him? Where is the fixed place of abode of the master, with his wife and family, and how long has he lived there? If he has no fixed place of abode, where was his last place of residence

and how long did he live there? Where was he born? Of what country or State is he a subject or citizen?

8. Of what tonnage or burden is the vessel which has been taken and about which you are examined? What number of the vessel's company belonged to her at the time she was seized and taken, and how many were then actually on board her? What countrymen are they? Did they all come on board at the same port and time or at different ports and times, and when and where? Who shipped or hired them, and when and where?

9. Did you belong to the company of the vessel so captured at the time of her seizure, and in what capacity? Had you or any of the officers or mariners or company belonging to the said vessel at the time of her capture any part, share, or interest in the same or in the goods or merchandise laden on board her and
106 what in particular, and what was the value thereof at the time the said vessel was captured and the said goods seized?

10. How long have you known the said vessel? When and where did you first see her? How many guns did she carry? How many men were on board of her at the beginning of the engagement before she was captured? Of what country build was she? What was her name and how long was she so called? Whether do you know of any other name she was called by, and what were such names, as you know or have heard?

11. To what ports and places was the vessel concerning which you are now examined bound on the voyage wherein she was taken and seized? Where did the voyage begin and where was the voyage to have ended? What sort of lading did she carry at the time of her first setting out on the voyage, and what particular sort of lading and goods had she on board at the time she was taken and seized? In what year and in what month was the same put on board? Do you or not know she had on board during her last voyage, and when, goods contraband of war, or otherwise prohibited by law, and what goods?

12. Had the vessel of which you are examined any passport or sea brief on board, and from whom? To what ports or places did she sail during her last voyage before she was taken? Where did her last voyage begin and where was it to have ended? Set forth the kind of cargoes the vessel has carried to the time of her capture, and at what ports such cargoes have been delivered. From what ports and at what time, particularly from the last clearing port, did the vessel sail previously to the capture?

13. What lading did the vessel carry at the time of her first setting sail in her last voyage, and what particular sort of lading and goods had she on board at the time she was taken? In what year and in what month was the same put on board? Set
107 forth the different species of the lading and the quantities of each sort.

14. Who were the owners of the vessel and goods concerning which you are now examined at the time of their capture and seizure? How do you know they were owners thereof at that time? Of what nation or country are they by birth and where do they

live with their wives and families? How long have they resided there? Where did they reside previously, to the best of your knowledge? Of what country or State are they subjects or citizens?

15. Was any bill of sale given, and by whom, to the owners of the said vessel and in what month and year? Where and in presence of what witnesses was it made? Was any and what engagement entered into concerning the purchase further than what appears upon the bill of sale? Where did you last see it and what has become of it?

16. In what port or place and in what month and year was the lading found on board the vessel, at the time of her capture or seizure, first put on board her? What were the names of the respective laders or owners or consignees thereof? What countrymen are they? Where did they reside before, to the best of your knowledge, and where were the said goods to be delivered and for whose real account, risk, or benefit? Have any of the said laders or consignees any and what interest in the said goods? What were the several qualities, quantities, and particulars of the said goods, and have you any and what reason to know or fully believe that if the said goods shall be restored and unladen at the destined ports they did, do, and will belong to the same persons and to none others?

17. How many bills of lading were signed for the goods seized on board the said vessel?

108 Were any of those bills of lading false or colorable or were any bills of lading signed which were different in any respect from those which were on board the vessel at the time she was taken? What were the contents of such other bills of lading and what became of them?

18. Have you in your possession or were there on board of the said vessel at the time of her capture any bills of lading, invoices, letters, or other writings to prove or show your own interest or the interest of any other person, and of whom, in the vessel or in the goods concerning which you are now examined? If in your power, produce the same and set forth the particular times when, where, and in what manner, and upon what consideration you became possessed thereof. If you cannot produce such paper evidences, then state in whose possession you last saw them or where you know or believe they are kept, and when and by whom they were brought or sent within this district, and also set forth the contents or purport of such papers.

19. State the degree of latitude and longitude in which the said vessel and her cargo were captured, as also the year, month, and day, and time thereof in which such seizure was made, and in or near what port or place, and whether it was a port of any State or Territory of the United States of America and what one. Was any charter-party for the voyage upon which the said vessel was captured signed and executed, and by whom and when? If in your possession, produce the same. If not, set forth its contents and state what has become of it.

20. What papers, bills of lading, letters, or other writings relat-

ing to the vessl or cargo were on board the vessel at the time she took her departure from her last clearing port before she was taken as prize? Were any of them burnt, torn, thrown overboard,
109 destroyed, or canceled, or attempted to be concealed, and when and by whom, and who was then present?

21. Did you or the owner, master, or person having command of the said vessel or her navigation at the time and place of her capture know or have notice that such place or port was in a state of war with the United States and that the naval forces of the United States held such port in a state of blockade? How, when, or where had you such knowledge or notice and when and where did the master or commandant obtain it?

22. Was such port under an order of blockade by the Government of the United States at the time said vessel or yourself entered or made an attempt to enter the same? Had the warning or notice of such blockade been given to or received by the owner, master, or commander of said vessel or yourself before or at the time she entered or attempted to enter said port, and when and in what manner? Had notice in writing been endorsed on the register or other ship's papers of the said vessel or yourself, and when, where, and by whom, of an existing blockade of such port before she entered or attempted to enter the same or before the time of her sailing or attempting to sail therefrom?

23. Was the register of the vessel about which you are examined shown to or examined by any officer of the United States Navy or by any revenue officer of the United States before she was captured and taken and before she entered the port at or near which she was taken and seized, and was the register or other ship's papers indorsed by said United States officer? Declare fully all you know or have reason to believe respecting this interrogatory, stating the persons, times, and places connected therewith.

110 24. Do you know or do you believe from information, and, if the latter, from what information and when and how was it obtained, that the vessel inquired about at any time or times after the blockade of the said port and with notice thereof and when attempted covertly and secretly to enter the said blockaded port or to sail therefrom without success? Disclose fully all your knowledge, information, and belief thereon, with the particulars upon which the same is founded.

25. Has the vessel concerning which you are now examined been at any time, and when, seized as prise and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority or on what account she was condemned.

26. Have you sustained any loss by the seizing and taking the vessel concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction, or promise of satisfaction for any part of the damage which you have sustained or may sustain by this capture and detention, and when and from whom?

27. Is the said vessel or goods or any, and at what ports, insured? If yea, for what voyage is such insurance made, and what premium,

and when, and by what persons, and in what country was such insurance made?

28. In case you had arrived at your destined port would your cargo or any part thereof on being unladen have immediately become the property of the consignees or any person, and whom, or was the lader to take the chance of the market for the sale of his goods?

29. Let each witness be interrogated of the growth, produce, and manufacture on board the vessel. Of what country and place
111 was the lading concerning which they are now interrogated or any part thereof?

30. Whether all the said cargo or any and what part thereof was taken from the shore or quay or removed or transshipped from one vessel to another, from what and to what shore, quay, and vessel, and when and where was the same so done.

31. Are there in any country besides the United States, and where, or on board any and what vessel or vessels, other than the vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers, or documents relative to the said vessel or cargo, and of what nature are they and what are their contents?

32. Were any papers delivered out of the said vessel and carried away in any manner whatsoever, and when and by whom and to whom, and in whose custody, possession, or power do you believe the same now are?

33. Was bulk broken during the voyage on which you were taken or since the capture of the said vessel, and when and where, by whom, and by whose orders, and for what purpose, and in what manner?

34. Were any passengers on board the aforesaid vessel? Were any of them secreted at the time of the capture? Who were the passengers by name? Of what nation, rank, profession, or occupation? Had they any commission, for what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined and upon what business? Had any and which of the passengers any and what property or concern or authority, directly or indirectly, regarding the vessel and cargo? Were there any officers, soldiers, or mariners secreted on board and for what reason were they secreted? Were any citizens
112 of the United States on board or secreted or confined at the time of the capture? How long and why? Whether any persons on board the said vessel at the time of her capture were citizens or residents of any State or Territory of the United States then in a state of war or rebellion against the United States, its Government and laws. If so, who by name and of what State or Territory? What was their employment on board the vessel and what their destination?

35. Were and are all the transports, sea briefs, charter-parties, bills of sale, invoices, and papers which were found on board entirely true and fair or are any of them false or colorable? Do you know of any matter or circumstance to affect their credit? By

whom were the passports or sea briefs obtained, and from whom? Were they obtained for this vessel only and upon the oath or affirmation of the persons therein described, or were they delivered to or on behalf of the person or persons who appear to have been sworn or to have affirmed thereto without their having ever in fact made any such oath or affirmation? How long a time were they to last? Was any duty or fee payable and paid for the same and is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often, and has the duty or fee been paid for such renewal? Was the vessel in a port in the country where the passports and sea briefs were granted; and, if not, where was the vessel at the time? Had any person on board any passport, license, or letters of safe conduct; if yea, from whom and for what business? If it should appear that there are in the United States or in any other place or country besides the United States any bills of lading, invoices, instruments, or papers relative to the vessel and goods concerning which you are now examined, state how they were brought into such place or country. In whose
113 possession are they and do they differ from any of the papers on board or in the United States or elsewhere, and in what particular do they differ? Have you written or signed any letters or papers concerning the vessel and her cargo? What was their purport, to whom were they written and sent, and what has become of them?

36. Towards what port or place was the vessel steering her course at the time of her being first pursued and taken? Was her course altered upon the appearance of the vessel by which she was taken? Was her course at all times when the weather would permit directed to the place or port for which she appears to have been destined by the ship papers? Was the vessel before or at the time of her capture sailing beyond or wide of the said place or port to which she was so destined by the said ship papers? At what distance was she therefrom? Was her course altered at any and what time, and to what other port or place, and for what reason?

37. By whom and to whom hath the said vessel been sold or transferred, and how often? At what time and at what place and for what sum or consideration? Has the same been paid or satisfied? Was the sum paid or to be paid a fair and true equivalent, or what security or securities have been given for the payment of the same, and by whom, and where do they now live? Do you know or believe in your conscience such sale or transfer has been truly made and not for the purpose of covering or concealing the real property? Do you verily believe that if the vessel should be restored she will belong to the persons now asserted to be the owners and to none others?

38. What guns were mounted on board the vessel and what arms and ammunition were belonging to her? Why was she so armed?

Were there on board any other guns, weapons, warlike arms,
114 or armament of any name or description; and, if any, what?

Were there any parts of warlike arms not put together or finished, or any ammunition, fixed or unfixed, or any balls, shells,

rockets, hand grenades, flints, percussion caps, or any other thing known to be intended for military equipment? Were there any belts, ball moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing, or accoutrements, or any parts of them, or any sort of warlike or naval stores? Were any of such warlike or naval stores or things thrown overboard to prevent suspicion at the time of the capture, and were any such warlike stores, before described, concealed on board under the name of merchandise or any other colorable appellation in the ship papers; if so, what are the marks on the casks, bales, and packages in which they were concealed? Are any of the before-named articles, and which, for the sole use of any fortress or garrison in the fort or place to which such vessel was destined? Do you know or have you heard of any ordinance, placard, or law existing in such country or State forbidding the exportation of the same by private persons without license? Were such warlike or naval stores put on board by any public authority? When and where were they put on board?

39. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the vessel and cargo concerning which you are now examined at the time of the capture?

40. Did the said vessel on the voyage in which she was captured (or on) or during any or what former voyage or voyages sail under the convoy of any ship or ships of war or other armed vessel or vessels? For what reason or purpose did she sail under such convoy? Of what force was or were such convoying ship or ships, and
115 to what State or country did the same belong? What instructions or directions had you or did you receive on each and every of such voyages, when under convoy, respecting your sailing or keeping in company with such armed or convoying ship or ships, and from whom did you receive such instructions or directions? Had you any and what directions or instructions and from whom for resisting or endeavoring to avoid or escape from capture or for destroying, concealing, or refusing to deliver up your vessel's documents and papers or any and what other papers that might be or were put on board your said ship? If so, state the tenor of such instructions or copies thereof; if so, leave them with the commissioner, to be annexed to your deposition.

41. Did the said vessel, during the voyage in which she was captured, or on making any and what former voyage or voyages, sail to or attempt to enter any port under blockade by the arms or forces of any and what belligerent power; if so, when did you first learn or hear of such port being so blockaded, and were you at any and what time and by whom warned not to proceed to or to attempt to enter into or to escape from such blockaded port? What conversation or other communication passed thereon, and what course did you pursue upon and after being so warned off?

42. Whether or no the vessel concerning which you are examined did sail on her last voyage, prior to her seizure, carrying a commission or license as a privateer or letter of marque and reprisal or other authority from any person or persons to cruise against

the persons or property of citizens of the United States and to make prizes thereof. By whom was such authority, license, or *or* direction given and when? Was it in writing; if so, did it remain with the vessel up to the time of her capture or was it destroyed
116 or concealed previous thereto. When and by whom? What were the contents or purport thereof? State all the facts in your knowledge within this inquiry and the sources of such knowledge; also state fully all the acts known to you to have been so done by the vessel, her master or crew, under such commission or license up to the period of her capture.

43. Whether or no the said vessel inquired about at any time and when and where sailed or acted in company or concert with any other armed vessel or vessels and what in cruising against, pursuing, or seizing as prize any persons, vessels, or property of citizens of the United States. Declare fully and particularly your knowledge, information, and belief therein.

44. What relations have you now or have you recently had in the Spanish military or naval service and what position or title do they hold or have they held under Spanish authority?

117 *Order in Relation to Interrogatories in Prize Causes.*

In the District Court of the United States for the Southern District of Georgia.

In re rules in prize causes.

Ordered by the court that the form of preparatory interrogatories in prize causes for southern district of New York, as set forth in Benedict's Admiralty, third edition, is adopted in this district for the present American-Spanish war as far as the same can be made applicable, save and except that after the word vessel in 22nd interrogatory as therein set forth it is ordered that there be added the words "or yourself."

Ordered further that the following additional interrogator*ies* shall be, and is hereby, adopted:

Int'y 44. What relations have you now or have you recently had in the Spanish military or naval service and what position or title do they hold or have they held under Spanish authority?

Ordered further that rule thirteen in priz*e* causes heretofore adopted be amended as follows:

The prize commissioners in charge may appoint a skillful stenographer, who shall be sworn to the faithful performance of his du*ty* and who shall take down stenographically and report in typewriting the answers of all witnesses to the standing interrogatories, which answers so reported shall be certified as usual by such commissioners or commissioner.

EMORY SPEER, *Judge.*

Endorsement: *In re* prize commissioners. Order in relation to interrogatories, etc. Filed in office July 21, 1898. S. F. B. Gillespie, deputy clerk.

118 *Order Appointing Rear Admiral A. E. K. Benham Prize Commissioner.*

District Court of the United States, Southern District of Georgia.

In re the appointment of prize commissioner for the southern district of Georgia.

Ordered by the court that Rear Admiral A. E. K. Benham, who has been approved and authorized as such by the Secretary of the Navy, be, and he is hereby, appointed a prize commissioner for said court, with all the duties, obligations, and responsibilities of such office.

EMORY SPEER,
U. S. Judge.

Filed in office July 22, 1898.

S. F. B. GILLESPIE,
Deputy Clerk.

119 *Affidavits of Edwin A. Anderson & Inventory of Papers, Str. Adula.*

Affidavit No. 1.

SOUTHERN DISTRICT OF GEORGIA, *ss:*

Before the undersigned personally comes Edwin A. Anderson, who, being duly sworn, deposes and says that he is a lieutenant in the Navy of the United States, and at the time of the capture of the steamship "Adula" by Commander Bowman H. McCalla, of the U. S. S. "Marblehead," on June 29th, 1898, affiant was officer of the deck on said "Marblehead."

That, under orders from Commander McCalla, affiant, on the 28th day of June, 1898, in Guantanamo bay, Cuba, proceeded to search said vessel "Adula" for her ship's papers, and for documents, letters, &c., which might be thereon; that on that evening and on the morning of July 1st, 1898, and afterwards, while said vessel was in his custody, affiant secured from on board said "Adula" all of the letters, papers, and documents herewith scheduled on the inventory hereto attached as Exhibit "A." For convenience of identification, affiant has marked or caused to be marked a designating number on each envelope containing papers with the same number on the paper enclosed in such envelope, and where there are more papers than one enclosed in such envelope has marked said additional papers with the same number as the envelope, adding the successive letters of the alphabet to each additional letter or paper of the enclosure.

All the letters, papers, and documents herewith turned over to the prize commissioners are the same and are in the same condition as they were when seized at the time of the capture of said "Adula," or as seized afterwards as aforesaid, except that certain envelopes were opened under authority of the commander of the United States

squadron or later at the time of making out this inventory by the prize commissioners, in the presence of affiant, in order to complete this inventory and schedule.

Letter on the inventory as No. 34 was found on the person of Don Jose R. Solis, and a translation was made by authority of Admiral Sampson. Letters and documents numbers 3, 4, 5, 6, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33,
120 35, 70, 110, 144, 149 were found by affiant on the person of said Solis, or in his state-room. Letter No. 147 was found on the "Adula."

Letters and documents numbers 1, 2, 10, 11, 27, 36, 38, 39, 68, 69, 71, 72, 73 were found by affiant on the person of Captain Yeats, of the "Adula," or in his state-room.

The remaining letters numbered on the inventory were found by affiant in the state-room of the purser and state-room of former Captain Walker, of said "Adula," pointed out by purser Williamson. The paper numbered 7 was erroneously entered on this list, it being a paper not found on the "Adula," and is withdrawn.

Affiant further deposes and says that if at any time hereafter, and before the final condemnation or acquittal of said property seized, any further or other papers relating to the said captured property shall be found or discovered to the knowledge of the deponent, they shall also be delivered up or information thereof given to the commissioners or to the prize court.

Affiant further says that he has delivered up to the prize commissioners the said documents, papers, and writings found on said prize as they were found and received by him, without any fraud, subduction, or embezzlement.

E. A. ANDERSON,
Lieut. U. S. Navy, Prize Master.

Sworn to and subscribed before us this 25th day of July, 1898.

A. E. K. BENHAM,
Rear Admiral U. S. N., Comm'r.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

121 EXHIBIT "A" No. 3.

Inventory of the Documents of the Ship and Cargo of the Steamship "Adula," Including the Log Book, with All Other Documents, Letters, and Other Papers Found on Board said Ship.

1. Log book S. S. "Adula."
2. Instructions to Capt. Yeats, S. S. "Adula."
3. Letter addressed Sr. Don Caydiac Vidal para entregar a Don Leonardo.
4. Telegram from Walter Voight, Kingston.
5. Letter addressed to Sr. Don Leonardo Ros.
6. Personal passport, Mr. Jose R. Solis.

7. Letter from Capt. Julien von Ripper, commanding Austro-Hungarian cruiser "Kaiserin" and "Konigin Maria Theresia."
8. Letter addressed to Don Plicaido R. Cespedes, care Jose Solis.
9. Letter addressed to Senor Don Caytano Vidal, and contents, Nos. 9, 9 (*a*), 9 (*b*), and 9 (*c*).
10. Agreement, the Atlas S. S. Co. and Jose R. Solis.
11. Bill of health, "Adula," Kingston.
12. Letter to Sr. D. Edwardo do Carden.
13. " " Eurique Louten.
14. Telegram from Alfonsa Martinez to Solis.
15. Telegram from Bori to Solis.
16. Telegraph from Sam'l Hart & Son to Solis.
17. Telegram from Bori to Perez for Solis.
18. Telegram from Maconelrn to Solis.
19. Telegram from Carbajosa to Solis.
20. Telegram from Carbajosa to Solis.
21. Telegram from Samuel Hart & Son to Solis.
22. Telegram from Carbajosa to Solis.
23. Telegram from Bori to Solis, with memoranda attached marked Nos. 23 (*a*) and 23 (*b*).
24. Telegram from S. Hart & Son to Solis.
25. Telegram from Carbajosa to Solis.
26. Telegram from Bori to Solis.
27. Instructions to Capt. Yeats from Capt. Forwood.
28. Letter from E. Diva to Sr. D. Cay l° Vidal.
29. Letter to Sr. Solis from Pedro Chabrol.

122 30. Documents, passage del Emanuel Raul; contents, Nos. 30, 30 (*a*), &c., to 30 (*k*), both inclusive.

31. Letter to Senor Don Cayetano Vidal, and contents, Nos. 32, 32 (*a*), and 32 (*b*).
33. Letter to Senor Don Leonardo Ros'y Rodriques.
34. Letter to Senor Jose Marimon from O. Fons.
35. Letter to Mr. Adolpha J. Corivaldi, Esq.
36. Ship "Adula's" register.
37. Letter of instructions to Capt. Walker from Capt. Forwood.
38. Clearance papers of the "Adula" from Kingston, Jamaica, dated June 28, 1898.
39. Charter-party of ship "Adula."
40. Letter to Senor Don Francisco, Accor, with enclosure No. 40 (*a*).
41. Letter to Capt. P. M. Beal, with enclosures Nos. 41 (*a*) to 41 (*e*), inclusive.
42. Letter to Mr. Walter G. Beal, with enclosures Nos. 42 (*a*) and 42 (*b*).
43. Lettert o Mess. E. Atkens & Co., with enclosures Nos. 43 (*a*) to 43 (*f*), inclusive.
44. Letter to J. N. S. Williams, Esq., and another letter, marked No. 44 (*a*).
45. Letter to M. E. Atkins & Co., with enclosures Nos. 45 (*a*), 45 (*b*), & 45 (*c*).
46. Letter to Louis Dent, Esq.

47. Certificates of purser as to the amount of money on board.
48. Letter to Sr. Lacelles De Mercado y Ca., with enclosure No. 48 (*a*).
49. Letter to Mrs. Henry Jenkins.
50. Letter to Miss Cairdad Esteran.
51. Letter to Lena Spencer.
52. Letter to Senor Don Julio Poriablas.
53. Letter to Mr. Fran *at* Bastarrethe.
54. Letter to Mrs. O'Naghten.
55. Letter to Chas. D. Fowler, with enclosures Nos. 55 (*a*) to 55 (*f*), incl.
56. Letter to Chas. D. Fowler, with enclosures Nos. 56 (*a*) to 56 (*d*), incl.
57. Clearance papers of the "Adula" from Kingston, two, both dated May, 1898.
58. Letter to Capt. Forwood from Capt. Walker.
59. Charter between Portuando and the Atlas Steamship Co.
60. Letter to F. A. Steel from Capt. Forwood.
123 61. Clearance papers of steamship "Adula" from Kingston, dated June 15, 1898.
62. Letter of instructions to Capt. Walker from Capt. Forwood, May 6, '98.
63. Letter to Peter Jamson.
64. Agreement between Mr. Fowler and the Atlas S. S. Co., May 21, 1898.
65. Letter of instructions from Capt. Walker to Capt. Forwood, May 16, '98.
66. Letter to Capt. Walker from Capt. Forwood, May 21, 1898.
67. Letter to Sr. Dn. Carolina Alongo.
68. Manifest of cargo of "Adula," dated June 28, 1898.
69. Crew list of the Adula, dated June 28, 1898.
70. Personal note book of J. R. Solis.
71. List of stores, ship Adula.
72. Pocketbook of Capt. Yeats, containing letters.
73. Personal memoradum book of Capt. Yeats.
74. Shipping receipts, S. S. Adula.
75. Personal ac. book of purser, S. S. "Adula."
76. Bills of lading of S. S. "Adula."
77. Official log book.
78. Agreement of crew, with duplicate agreement No. 78 (*a*).
79. Account of wages, S. S. "Adula."
80. Night order book of Capt. Yeats.
81. Pay-roll, S. S. "Adula."
82. List of cargo, S. S. "Adula."
83. Letters from W. Rica and C. C. Farquarson, Nos. 83, 83 (*a*), and 83 (*b*).
84. Letter to Capt. Walker from F. Reajawgarthine.
85. Letter to Capt. Walker from C. Murphy.
86. Letter to marine board from Capt. Walker.
87. Memorandum to J. C. Williamson.
88. Letter to R. H. Prestongt.

89. Ticket by S. S. "Adula" to Albert Alford.
90. Memorandum to Mr. Williamson.
91. Memorandum to Mr. Williamson.
92. Letter to Capt. Forwood from y. Mde. Paso, with letter from Capt. Forwood to Capt. Walker.
93. Memorandum from Capt. Walker to Mess. R. B. Nunes & Co.
94. Circular letter from W. Peploe Forwood.
124 95. Postal card from Bird to Mess. Leyden & Co.
96. Memorandum *from* purser of "Adula" from A. D. Jacob.
97. Memorandum to J. C. Williamson from A. Neill.
98. Custom-house receipt at Kingston from collector.
99. Letter to inspector of police, Port Antonio, from purser of "Adula."
100. Card to Deor Lam from Henry Elery.
101. Letter to purser of Adula from Capt. Forwood, enclosing circular.
102. Letter to Capt. Forwood.
103. Letter to Williamson, Esq., from R. H. Preston.
104. Telegram from A. H. Brown & Bros. to J. C. Williamson.
105. Letter to Capt. Forwood.
106. Summary of cargoes, S. S. "Adula."
107. Receipted bill, Mr. Williamson.
108. Memorandum to Capt. Walker from W. Peploe Forwood.
109. Clearance papers, S. S. Adula, from Santiago de Cuba, May 18, 1898.
110. Receipted bill of Solis.
111. Letter to the Hon. D. S. Gideon from W. W.
112. Letter to J. Williamson from Emanuel Lyon & Son.
113. Receipted bill of W. P. Forwood.
114. Letter to chief officer "Adula" from ——.
115. Copy of letter from Capt. Walker to Mess. R. P. Braham & Son.
116. Memorandum from W. P. Forwood to Mr. Williamson.
117. Letter to Capt. Walker from Jas. Clarkson.
118. Memorandum from W. P. Forwood to Capt. Walker, attaching letter from Nunez & Co. and telegram to Capt. Walker.
119. Telegrams to Capt. Walker from Capt. Forwood, being Nos. 119, 119(*a*), and 119(*b*).
120. Telegrams to chief officer "Adula" from A. H. Brown & Bros.
121. Telegram to S. J. Vine from A. S. Aguilal.
122. Telegram to purser of "Adula" from A. H. Broune & Bro.
123. Memorandum book of Capt. Walker.
124. Bar ac. and bar bills, S. S. "Adula," Capt. Walker.
125. Letter from Harold H. Anderson to skipper.
126. Letter to skipper from Tubie.
127. Memorandums of the uniforms to be worn by Atlas S. S. fleet.
125 128. Memorandum, Capt. Walker.
129. Bar ac. and bar book.

130. Card with list of names.
131. Deed to Wm. See, conveying a lot of land in Kingston, Jamaica.
132. Sundry personal bills of Capt. Walker, ship Adula.
133. Report of examiner, sloop Sophia.
134. Clearance papers issued to Walker, master of Adula.
135. Memorandum books found among Capt. Walker's papers.
136. Bar accounts and bar book, S. S. Adula.
137. Store lists of Atlas S. S. Co.
138. One package wine cards.
139. Tax receipt, M. Darling.
140. Compass deviation book.
141. Capt. Walker's ac. book, locked.
142. Letter from marine b'd, Jamaica, to Capt. Walker.
143. Note written by Capt. Walker.
144. Private bills, Mr. J. R. Solis, Nos. 144 to 144 (*k*), both inclusive.
145. Memorandum bill, Hart & Co.
146. Manifest of cargo, "Adula."
147. Letter to F. R. Solis from P. H. Bocler.
148. Memorandum by the purser, S. S. "Adula."
149. Charter-party of schooner "Emanuel Raoul."
150. Letter to Capt. Walker from Harvey & Bourke.
151. Pilot's license of Mr. Walker.

E. A. ANDERSON,
Lieutenant U. S. Navy, Prize Master.

Endorsement: From sealed package from prize commissioners. Opened by the court, and now, July 27th, 1898, marked filed. S. F. B. Gillespie, deputy cl'k.

126 *Affidavit of Lieut. E. A. Anderson, No. 2.*

Southern District of Georgia, Eastern Division.

In the Matter of STEAMSHIP "ADULA." Supplementary Inventory.

Before the undersigned personally comes Edwin A. Anderson, who, being duly sworn, deposes and says that the attached newspapers, scheduled as follows:
No. 152, La Lucha of June 9, 1898;
No. 153, The Daily Gleaner, of June 14, 1898;
No. 154, The Daily Gleaner, of June 25, 1898,
were upon the steamship "Adula," together with numerous other newspapers, at the time of the seizure of the "Adula," as prize of war in Guantanamo bay June 29, 1898; that said newspapers were in circulation among the officers of the "Adula;" that affiant did not take possession of said newspapers, however, until after he had delivered the other papers seized to the prize commissioners; that, having his attention called to the probable importance of said newspapers by the United States attorney, affiant collected such of

said newspapers as were then left on said ship from the dining saloon and engineer's room of the "Adula," being informed by the engineer that the other newspapers found aboard had been destroyed at quarantine, and affiant now delivers same to the prize commissioners in the same condition in which the same were found by him.

E. A. ANDERSON,
Lieutenant U. S. Navy, Prize Master.

Sworn to and subscribed before *me* this July 26, 1898.

A. E. K. BENHAM,
Rear Admiral U. S. Navy, Comm'r.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

Endorsement: From sealed package from prize commissioners opened by the court and now, July 27, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

127 *Oaths of George T. Cann and Manning White, as Stenographers.*

Southern District of Georgia, Eastern Division.

In re the "ADULA." Prize Proceedings. Preparatory Interrogatories.

George T. Cann and Manning White, being duly sworn, depose and say that they will correctly take down and report, as stenographers appointed by the prize commissioners in the above-stated proceedings, the testimony of the witnesses before the prize commissioners on the standing interrogatories in each case and otherwise faithfully perform their duties as such stenographers and typewriters.

GEO. T. CANN.
MANNING WHITE.

Sworn to and subscribed before me this 20th day of July, 1898.

EDGAR DENMARK,
Commissioner.

Endorsement: United States *vs.* Steamship Adula. Prize. Affidavits of George T. Cann and Manning White, upon being sworn in as stenographers. From sealed package from prize commissioners opened by the court and now, this July 27, 1898, marked filed. S. F. B. Gillespie, dep. cl'k.

128 *Depositions of J. C. Williamson.*

UNITED STATES OF AMERICA,
Eastern Division of the Southern District of Georgia.

In re the "ADULA." Prize Cause.

The deposition of James Crerar Williamson, a witness produced, sworn, and examined *in preparatorio* on the 21st day of July, in the year 1898, at the United States court-room, Savannah, Georgia, on the standing interrogatories established by the district court of the United States for the southern district of Georgia, the said witness having been produced for the purpose of such examination by the United States attorney in behalf of the United States and the captors of a certain ship or vessel called the "Adula."

1st. To the first interrogatory deponent answers: Jamaica. I now live at Kingston, Jamaica, and have lived there all my life, with the exception of one year in America. I am a subject and citizen of England; I owe allegiance to England. I am not a citizen of the United States of America. I am not a married man.

2nd. To the second interrogatory deponent answers: I was present at the capture or taking of the vessel "Adula."

3rd. To the third interrogatory deponent answers: Such seizure or capture was made in Guantanamo bay on the 29th of June, 1898. She was anchored in the bay when we were told we were to be seized. The "Adula" had no instructions or permissions or letters authorizing her to make prizes, so far as I know. I was not present when the ship was seized. I knew the ship was seized when the captain returned from the "Marblehead."

4th. To the fourth interrogatory deponent answers: Under the British flag. I don't know what other colors she had on board.

5th. To the fifth interrogatory deponent answers: No resistance was made at the time of the capture; no guns were fired by the "Marblehead" or by us. The capture was made by the "Marblehead."

At the time of the capture the "Solace" was one ship there and two or three torpedo-boats. I don't know the names of all the vessels. The vessel captured was a merchantman and belonged to Sir William Forwood. I believe he is the registered owner. The managing owners are Leech, Harrison, and Forwood.

129 6th. To the sixth interrogatory deponent answers: I don't know whether the capturing vessel or vessels have commission to act in the seizure or capture of the vessel inquired about. I have knowledge they received notice about us, to look out for the ship; that is only hearsay. I don't know who they received it from: I suppose from the American admiral. The capture was made by the "Marblehead." The vessel has never been condemned.

7th. To the seventh interrogatory deponent answers: Her name was the "Adula;" her master or commander was R. W. Yeates;

he was appointed to the command by Captain W. P. Forwood at Jamaica. I have known the vessel since 1889. I think she was built then. I have known the captain about two years, I should think. He took possession of her at Kingston, Jamaica. The vessel was delivered to him, I suppose, by Captain Forwood; in the office, I suppose. The place of abode of the master is Emmaville, Kingston, Jamaica, and his wife and family live there. He has lived there since I have known him. I don't know where he was born. He is an Englishman and is a citizen of England.

8th. To the eighth interrogatory deponent answers: The "Adula's" net register is 372. The vessel's company was thirty-five belonging to her at the time she was seized and taken, and they were aboard of her at that time. I think, excepting one man, they are all Englishmen; that one man, I think, is a Spaniard. They all came aboard at the same port, but at different times. I cannot remember when and where. The master shipped and hired them; the agreement is always with the master; he always make the agreement, and that at Kingston, Jamaica. I cannot tell you when.

To the ninth interrogatory deponent answers: I belong to the company of the vessel at the time of the seizure, in the capacity of purser. I had no part, share, or interest in the same or in the goods or merchandise laden on board of her; but the liquor on board is the previous captain's perquisites and my personal property. As to the other parties mentioned, I don't know of their interests. So far as I know, they have none.

130 10th. To the tenth interrogatory deponent answers: I have known the "Adula" since 1889, about 9 years. I first saw her at Kingston, Jamaica, in 1889 or 1890. She had no guns. She was built at Belfast, Ireland, of British build. Her name was "Adula" and called so from the time she has been in Jamaica. I don't know what her name was prior to that.

11th. To the eleventh interrogatory deponent answers: The "Adula" was bound to Guantanamo, Santiago, and Manzanillo. The voyage began at Kingston, Jamaica, and was to have ended at Kingston, Jamaica. At the time of her first setting out on the voyage she was loaded with water ballast; at the time she was seized she had on board water ballast. I don't know when it was put on board. During her last voyage she had no contraband of war on board.

12th. To the twelfth interrogatory deponent answers: The "Adula" had no passport or sea brief, that I know of. We had a bill of health from the board of health of Kingston, vised by the Spanish consul. She had the ship's register and the original official articles. The "Adula" sailed straight from Kingston to Guantanamo on her last voyage. It was to have ended at Kingston. She was to have begun at Kingston, gone to Guantanamo. From Guantanamo we were to have gone to Santiago, with the permission of the American fleet, and from Santiago to Manzanillo and from Manzanillo to Kingston. The vessel has carried general merchandise always and unloaded and delivered it at the outports of Jamaica. The voyage before the last voyage we went to Cuba, but we took no

cargo; we went in water ballast. Previous to that we have always gone in water ballast when going foreign, and when going around the coast of Jamaica we have carried always general merchandise. When we went in water ballast we carried passengers and water ballast back. Such passengers were delivered at Kingston, Jamaica. We did not deliver any cargo at Cuba because we never had any cargo to deliver. On the last voyage we sailed at about half past 5 on the 28th of June, and we arrived at about the same time on the 29th of June at Guantanamo.

13th. To the thirteenth interrogatory deponent answers: At the time of her first setting sail on her last voyage the vessel had no lading or cargo.

131 14th. To the fourteenth interrogatory deponent answers: At the time of her capture and seizure the owner of the vessel was Sir William Forwood, registered owner. Leech, Harrison, and Forwood were the managing owners. I know they were the owners because the registered owner is on the register that way, by birth, British. They live with their wives and families in England. I don't know how long they have resided there; I don't know of their residing any other place. They are British subjects.

15th. To the fifteenth interrogatory deponent answers: There was no bill of sale, that I know of, given to anybody. She was built for them, so far as I know.

16th. To the sixteenth interrogatory deponent answers: No cargo on board.

17th. To the seventeenth interrogatory deponent answers: No cargo and no bills of lading of cargo and no papers about cargo.

18th. To the eighteenth interrogatory deponent answers: At the time of the capture of the said vessel there were no goods on the ship. I had some bills of lading that did not refer to any cargo we carried on this voyage, because we had no cargo. I had no letters or writing to show my own interest or the interest of any person in the vessel concerning which I am now examined. I had the ship's register. That shows the ownership of the vessel. I had the articles and the log besides that. I had some old receipts and bills for things delivered, etc. I gave them to the lieutenant that came to the ship as prize master.

19th. To the nineteenth interrogatory deponent answers: I don't know the degrees of longitude and latitude. She was captured in Guantanamo on the 29th of June, 1898, six or half past six o'clock in the evening. Guantanamo is in Cuba. When we left Kingston we understood it was Spanish territory. There was a charter-party for the voyage and the charterer was J. R. Solis. I did not see the charter-party, so I cannot tell what it contained. I know there was a charter-party signed and executed. I don't know who signed it. I don't know anything about the dates or anything else. I have not it in my possession. The captain handed it to Captain McCalla, of the "Marblehead."

132 20th. To the twentieth interrogatory deponent answers: Only the papers I have already stated. Of course there were private papers in the captain's room. Those I had nothing to do

with, except I had charge of the drawer, and they were in his desk. To my knowledge none of them were burned, torn, thrown overboard, destroyed, or concealed or attempted to be concealed.

21st. To the twenty-first interrogatory deponent answers: We knew that America and Spain were at war together in Cuba. I speak for myself; I won't speak for the captain or the owner. I did not know that Guantanamo was blockaded. I did not know that the United States held such port in a state of blockade and had no notice to that effect. I don't know of anybody else having any notice.

22nd. To the twenty-second interrogatory deponent answers: We were told by Commander McCalla that the port was blockaded and that the blockade had been declared the day previous to our arrival. We received notice of such blockade after we were told we were a prize. If we had been warned, we would have cleared out, or at least we would have cleared out with their permission; if we had been told we could not enter and go back to Jamaica, we would have done it very promptly. We had no intention of running the blockade. There was no notice endorsed on her papers of the blockade of Guantanamo.

23rd. To the twenty-third interrogatory deponent answers: There was an entry made on the register at Cienfuegos that it was a blockaded port by Lieutenant Anderson, of the "Marblehead." I don't know how long previous to the 29th of June. I was not present then, but I say the entry on the register. I think it was about a month or more previous—a month or six weeks.

24th. To the twenty-fourth interrogatory deponent answers:

We went back to Cienfuegos after the notice of blockade was endorsed on the register, once with the permission of the American consul and once without. The first time we went there with permission, and on going in (this is hearsay; I was not there myself on the first voyage) we were stopped by the "Marblehead" and entry made on the ship's register by Lieutenant Anderson. On coming out I believe she reported herself to the "Marblehead."

133 On the second voyage we went over with the permission of the American consul, and we saw the American blockading fleet, under command of Commodore Schley, at Cienfuegos. We went in and took passengers, and when we came out we did not see any fleet there, and the third trip we went, we went without permission, and we took passengers, and we came out and saw no ships there, going or coming, until we were about 70 miles off the coast of Cuba, when we were stopped by the "Yankee" and told to proceed on our voyage. The ship was under charter that third time to Salcinas, a Cuban or Spaniard.

25th. To the twenty-fifth interrogatory deponent answers: The "Adula" has never been seized as a prize and condemned as such.

26th. To the twenty-sixth interrogatory deponent answers:

I have personally sustained no loss by reason of the seizure and taking of the vessel concerning which I am now examined.

27th. To the twenty-seventh interrogatory deponent answers:

I don't know whether the vessel is insured.

28th. To the twenty-eighth interrogatory deponent answers:
There was no cargo on board.
29th. To the twenty-ninth interrogatory deponent answers:
There was no cargo on board.
30th. To the thirtieth interrogatory deponent answers:
There was no cargo on board.
31st. To the thirty-first interrogatory deponent answers:
Not to my knowledge.
32nd. To the thirty-second interrogatory deponent answers:
There were no papers taken away except the papers that were given to the United States authorities.
33rd. To the thirty-third interrogatory deponent answers:
There was no cargo on board.
34th. To the thirty-fourth interrogatory deponent answers:
There were no passengers, no persons were secreted, and no officers, soldiers, or marines secreted on board. No citizens of the United States were on board or secreted or confined at the time of the capture. There was one party, a member of the crew, on board, who was the supercargo, who was a Spaniard; his name was J. R. Solis; his employment on board was supercargo, and his destination was Kingston, Jamaica.

134 He is an extra clerk on the ship. There was no cargo to be looked after. He was the charterer of the ship and went in the ship to look after his interests, so as to save complications in carrying passengers and to look after the passengers, to collect the passengers and to berth them, as a charterer generally takes the whole of that out of our hands, because he knows the people.

35th. To the thirty-fifth interrogatory deponent answers:
All papers found on board are entirely true and fair, and none of them are colorable, to my knowledge. I don't know anything to affect their credit. The charter is straight, the papers are straight, and for the purposes they are made out, to my knowledge. There are no passports or sea briefs. No person on board had any passport, license, or letters of safe conduct, to my knowledge. I suppose Mr. Solis must have had his; I don't know for certain he had it. I have not written or sent any paper concerning the vessel or her cargo.
36th. To the thirty-sixth interrogatory deponent answers:
The vessel was steering her course towards the port of Guantanamo, at which port she had arrived and anchored at the time of her first being pursued and captured or taken. Her course was not altered upon the appearance of the vessel by which she was taken. Her course at all times, when the weather would permit, was directed to the place or port to which she appears to have been destined, but it was considerably out of the course on account of the winds and currents; I think to the westward. We could see the blockading fleet at Santiago very plainly. I cannot tell whether she was sailing wide; her course was altered about 2 o'clock of the day she was captured; I mean to say altered perceptibly to me. I say her; she was ahead towards the land, and then turned away from it to the

eastward. Of course, if they altered the course a point or two I would not know it.

135 37th. To the thirty-seventh interrogatory deponent answers:

The vessel has never been sold. I believe she would be returned to the person now asserted to be the owner and no others if released.

38th. To the thirty-eighth interrogatory deponent answers:

There were none, to my knowledge.

39th. To the thirty-ninth interrogatory deponent answers:

To all I know or believe, to the best of my knowledge and belief, regarding the real and true purpose and destination of the vessel and cargo concerning which I am now examined, at the time of the capture, is that she went for refugees, and she is owned by the parties I have previously named, and her final destination was Kingston, Jamaica. She was to have gone from Kingston to Guantanamo, Santiago, and Manzanillo, taking on refugees at each place.

40th. To the fortieth interrogatory deponent answers:

The said vessel, on the voyage on which she was captured or on or during any former voyage or voyages, sailed under convoy of no ship or ships of war or other armed vessel or vessels.

I had no instructions or directions for resisting or endeavoring to avoid or escape from capture or for destroying, concealing, or refusing to deliver to these vessels documents or papers. We are told by the manager to hand everything pertaining to the ship over to the American Government or to the blockading fleet if we met them.

41st. To the forty-first interrogatory deponent answers:

The said vessel, during the voyage in which she was captured and on no former voyage or voyages, sailed to or attempted to enter any blockaded port, unless our third voyage to Cienfuegos is considered such. We had notice that Cienfuegos was a blockaded port. I do not know how that notice was made, because I was not on board the ship at the time; I saw it on the register. That is all I know about it.

42nd. To the forty-*third* interrogatory deponent answers:

The vessel has never done it, to my knowledge.

43rd. The Adula has never sailed in company with any armed ship for the purpose mentioned in this interrogatory.

44th. To the forty-fourth interrogatory deponent answers:

136 I have not now and have not recently had any relatives or connections in the Spanish military or naval service.

J. C. WILLIAMSON.

Subscribed and sworn to before us this July 22, 1898.

A. E. K. BENHAM,
Rear Admiral U. S. N., Commissioner.

JULIAN SCHLEY,
Commissioner.

EDGAR DENMARK,
Commissioner.

Endorsement: United States *vs.* Steamship "Adula." Prize. Interrogatories — J. C. Williamson. From sealed package from prize commissioners. Opened by the court and now, July 27, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

137 UNITED STATES OF AMERICA, }
Southern District of Georgia, Eastern Division. }

In re the "ADULA." Prize Cause.

Deposition of Robert Williams Yeats, a witness produced, sworn, and examined *in preparatorio* on the 22nd day of July, in the year of 1898, at the United States court-rooms, Savannah, Georgia, on the standing interrogatories established by the district court of the United States for the southern district of Georgia, the said witness having been produced for the purpose of such examination by the United States attorney in behalf of the United States and the captors of a certain ship or vessel called the "Adula."

138 1st. To the first interrogatory the deponent answers:

I was born in London, England. I now live with my wife in Kingston, Jamaica. It will be two years in August, 1898, that I have lived there. I am a citizen of the island of Jamaica, and I am a subject of Great Britain. I am not a citizen of the United States of America. I am a married man, and my wife and family reside in Kingston, Jamaica.

2nd. To the second interrogatory the deponent answers:

I was present at the time of the capture of the "Adula."

3rd. To the third interrogatory the deponent answers:

We were in Guantanamo bay at the time Captain McCalla captured us; that was on the 29th of June. We were in the port, anchored, at the time the capture was made, and the vessel was then carried to Savannah. The "Adula" had no right to make captures of other vessels. The "Adula" was seized on the ground that we had no permit from the American consul at Kingston, Jamaica, to visit Guantanamo. Captain McCalla asked me if I had any permit from the American consul at Kingston, Jamaica, and I said, "No," and he said, "I will seize your ship, then."

4th. To the fourth interrogatory the deponent answers:

The "Adula" sailed under the British flag; we had no other colors on board.

5th. To the fifth interrogatory the deponent answers:

There was no resistance made at the time of the capture, and there was no guns fired. I think the "Marblehead" boarded us and took possession of our boat. I think it was the "Marblehead's" steam-launch that came alongside of us and boarded us.

139 There were several other ships in sight, but I don't know the names of any, except the "Solace." The "Adula" was a merchantman; the capturing vessel was a ship of war.

6th. To the sixth interrogatory the deponent answers:

I don't know anything about as to whether the "Marblehead" had any authority to capture us. The "Marblehead" made the

capture of the "Adula." The "Adula" has never been condemned, that I know of.

7th. To the seventh interrogatory the deponent answers:

The name of the vessel captured was the "Adula," and the name of her master was Robert Williams Yeats. I am put down on the ship's register as master. The board of trade generally recognizes the term "master." The term "captain" is generally given as a courtesy. Captain Forwood at Kingston, Jamaica, appointed me to the command of this vessel. I have known the "Adula" for about six years. I took possession of the "Adula" at Kingston, Jamaica, as well as I can remember, on the 20th of last month, and Captain Forwood delivered the "Adula" to me. The fixed place of abode of my wife and family is Kingston, Jamaica, and I have lived there about two years. I was born in London. I am a subject of Great Britain.

8th. To the eighth interrogatory the deponent answers:

The "Adula" is 372 registered tonnage. There were 35 in the ship's company at the time she was seized, and they were all on board when she was seized. They are all British subjects except one, Mr. Solis; he is a Spaniard. They all came on board at one port, Kingston, on the 28th of June. In our usual trade we have a general cargo on board—that is, in the coastal trade. The crew on board the ship are mostly old hands. Some have been on there some months; some have been there for two or three years. The chief officer generally engages all the hands. All the men came on board on the same day we left Kingston. They were engaged by the shipping officer away from the ship, and I don't know whether they all came on board at the same time, but they all came on board on the same day. In our usual business in plying the coastal trade the men are not required to sign any articles, but for this voyage, which was to a foreign port, they were required to sign the articles. These men were shipped as the law requires, and I think they all signed the articles on the day we left Kingston. The chief officer hires the deck hands and what men he wants, the chief steward hires the stewards, and the engineer would hire his hands, and the purser would take them up before the shipping master and sign them all.

9th. To the ninth interrogatory the deponent answers:

I belonged to the company of the "Adula" at the time of her seizure. I was her master. I had no share or interest in the "Adula" at the time of her capture, and I don't think any of the others in the ship's company had any.

10th. To the tenth interrogatory the deponent answers:

I have known the "Adula" for six years, as well as I can remember. When I first saw her I was running out here on a steamer called the "Maroon," from London to Jamaica, and I saw the "Adula" then along the coast of Jamaica. The "Adula" carried no guns. At the time the "Adula" was captured there were 35 men on board. The "Adula" was built in Belfast, Ireland. The ship's name is the "Adula," and that has been her name ever since she

has been built. I have never known the "Adula" to be
141 called by any other names.

11th. To the eleventh interrogatory the deponent answers: At the time the "Adula" was taken and seized she was bound for Guantanamo bay, Santiago, and Manzanillo. All of these ports are on the island of Cuba. The voyage began at Kingston, and it was to have ended at Kingston. At the time she was taken and seized she had no lading on board; she only carried water ballast. At the time the "Adula" was seized she had no contraband of war on board.

12th. To the twelfth interrogatory the deponent answers: The "Adula" had a passport or bill of health, as we call it, from the authorities at Jamaica, and visaed by the Spanish consul. I don't know whether the "Adula" had any passport or sea brief; I know nothing about them. On the voyage previous before the "Adula" was taken she went around the island of Jamaica on a coasting trip. We went to about 12 ports before we returned to Kingston. The "Adula's" last voyage began at Kingston and was to have ended at Kingston. The "Adula" has been engaged in the coasting trade, carrying produce around the island of Jamaica and carrying goods transshipped from New York and from other places around Jamaica, and then she has been engaged in making trips to Cuba. The "Adula" has made three trips to Cienfuegos, one to Santiago, and this last one to Guantanamo, in which she was captured in Guantanamo bay. The first two trips we made to Cuba were to Cienfuegos, and then one trip to Santiago, and then another trip to Cienfuegos, and then a trip to Guantanamo bay, when we were captured. We landed noth-
ing on the first two voyages to Cienfuegos, and we
142 landed nothing at Santiago, and on the third trip to Cienfuegos we landed some stores. These stores were composed of beef, pork, rice, butter—just provisions. There were about two hundred packages delivered there. On our return trips we brought back Cuban refugees to Kingston. The first two trips we made were for American subjects. They were supposed to be American subjects. We had a permit from the American authorities at Washington or from Mr. Dent, the American consul. I don't know whether they were American subjects that we brought away, but they were supposed to be American subjects, and on the other trips we made we carried back whatever refugees there came along. At the time we made our last trip we stopped at no other foreign port except Guantanamo. On this last voyage we passed near Port Royal, Jamaica, and then we came within seven or eight or ten miles of Santiago. The reason for our going by Santiago was on account of my not being acquainted with the coast line to the eastward of Santiago, and I had no large-scale chart, and therefore I steered more to the westward than I should have done, and I went more to the westward to make out the land, because I knew the coast about Santiago and I didn't know the coast about Guantanamo bay.

13th. To the thirteenth interrogatory the deponent answers:

At the time the "Adula" was captured we had no cargo on board.

14th. To the fourteenth interrogatory the deponent answers:

The "Adula" is supposed to be owned by Forwood Brothers, but, of course, I can't say who owns her. Mr. "W. B. Forwood" is the name put down on the ship's register as the owner. The owners are British subjects, but I don't know where they live. They
143 are citizens of the United Kingdom.

15th. To the fifteenth interrogatory the deponent answers:

I don't know anything about any bill of sale being given for the "Adula."

16th. To the sixteenth interrogatory the deponent answers:

At the time the "Adula" was seized there was no cargo on board.

17th. To the seventeenth interrogatory deponent answers:

There were no bills of lading on the "Adula" at the time she was captured.

18th. To the eighteenth interrogatory deponent answers:

I have my letter of instructions from the owner's agent, Captain Forwood, and I have a copy of the charter-party and the ship's articles, the official log book, and a bill of health from Kingston. Those were in my charge. I think that's all that I had—and, of course, the manifests from Kingston. Mr. Solis was the charterer. As far as I can remember, the purpose stated in the charter was that we were to bring refugees. I don't think the charter-party stated that we were to take on any cargo at all. According to my letter of instructions, I was to go to three ports, and, as I remember, if I remember correctly, I think if the charterer wanted me to go to any other ports I was to go there. As I understood it, as well as I can remember, we were to go to any other ports that the charterer designated and was not put down in the letter of instructions if he wished to go there. I read my letter through only once that came from Captain Forwood, and I can't say exactly what is contained in it. I had no other papers in my possession
144 except the charter-party, which shows the interest that Mr. Solis had in the "Adula," and which was only as charterer. I gave all of my papers to the United States authorities, and I think they were all brought here by Lieut. Anderson. I don't know whether they were brought here or not, but I believe so. The last time I saw them they were in the possession of Commander McCalla, on the Marblehead. I believe all the papers were brought by Lieut. Anderson when he brought the ship from Guantanamo bay to Savannah. I don't exactly remember the exact tenor of the papers that were on board the vessel; it is a long time since I have seen them. As to the purport of the charter-party, I can tell you that the charterer is paying one hundred pounds a day for the ship for the first ten days. As I said before, if he should want me to go to any other port except those specified in the charter-party, I was to go there. There was no additional compensation for this; only 100 pounds a day was to be paid for the first ten days. I think if the

trip ran beyond ten days that there was a special agreement made between Captain Forward and Mr. Solis as to payment for this.

19th. To the nineteenth interrogatory deponent answers:

I do not know the position of the ship at the time she was captured; she was captured in Guantanamo bay, Cuba. I cannot tell you the latitude or longitude in which the "Adula" was captured. She was captured on the 29th of June, about five thirty p. m. The charter-party was signed and executed on the 28th of June by Mr. Solis and Captain Forwood. I had a copy of the charter-party and Mr. Solis had the original; Commander McCalla took my copy away from me; the last time I saw it, it was in the possession of
145 Commander McCalla. I have already stated as to my belief of the contents of the charter-party. At the time the "Adula" took her departure from Kingston, the only papers she had on board were those that I enumerated; there were other papers found in Captain Walker's cabin. Captain Walker was taken with a paralytic stroke, and his cabin was not used at all by me. There were no papers burnt, torn, thrown overboard, or concealed, nor was any attempt made to conceal any when the "Adula" was captured.

21st. To the twenty-first interrogatory deponent answers:

At the time we left Kingston I knew that there was a state of war existing at Guantanamo, but I did not know that the United States ships of war held such port in a state of blockade. I do not know whether the owner knew it. He told me that I would meet war vessels off there, but I did not know anything about any blockade. He said I should meet them off Santiago also. We knew at Kingston that the United States were landing troops off Santiago, but I did not know that the President had issued a proclamation declaring a blockade of Guantanamo or Santiago. As to a blockade, in the strict sense of the word, as to a blockade of Guantanamo bay, I didn't know anything at all about it. I had seen in the papers about Cienfuegos being blockaded, but as to Santiago and Guantanamo bay being blockaded, I never knew anything at all about it. I knew some weeks before that Cienfuegos was blockaded, and I knew that by having gone there on previous occasions. I didn't know whether the owner knew that Santiago and Guantanamo bay were blockaded or not; he simply told me that I should meet warships off there. The first time I knew that Guantanamo was blockaded was when Commander McCalla told me that we had no right there.

146 22nd. To the twenty-second interrogatory deponent answers:

At the time we went to Guantanamo it was apparently under an order of blockade; no warnings or notice had been given to or received by me as to this blockade. At the time we entered the port of Guantanamo I was informed that the port was under the control of the United States military forces; we were inside the harbor then at that time and had anchored. I received no information prior to our anchoring as to this blockade. We passed by one vessel—I think it was the "Vixen"—and they told me to proceed. He fired a gun and I stopped immediately. He asked me where we were

bound, and I said, "To Guantanamo bay." He asked me if I had seen any warships, and I said I passed some going up about an hour or so before—previous—and he directed me to proceed. There was no further conversation between us at that time; in fact, he did not stop his engines at all; just steamed right on up. We were about half a mile from the actual entrance of Guantanamo at that time; at that time I could distinguish the Marblehead plainly. We could see the vessels in the bay before we rounded the point. I could see the ships about four miles off from our anchorage, and I took them to be vessels of war; Capt. Forwood told me that I should see vessels of war around there. When the "Vixen" hailed me we were about half a mile from the entrance to the bay and about four miles from where we anchored. I can only say from the log book how far we were from the entrance to the bay, but we were about four miles from the anchorage in Guantanamo bay. It was only after I had anchored that I was acquainted with the blockade of the harbor. Neither the commander of the "Vixen" or any one on board of the ship gave me any notice as to the
147 blockade. I do not know whether Captain Forwood knew whether Guantanamo was blockaded or not. No notice in writing had been endorsed on the ship's register or other ship's papers of the "Adula" respecting an existing blockade of the port of Guantanamo at any time.

23rd. To the twenty-third interrogatory deponent answers:

Off Cienfuegos the ship's register was endorsed; that was on our first voyage; it was endorsed by Lieut. Anderson, of the Marblehead, to the effect that Cienfuegos was blockaded. There were other points mentioned in the endorsement, I think, but Santiago nor Guantanamo bay were not among them. I am not certain whether Santiago was mentioned or not, but I know that Guantanamo was not mentioned at all. Lieut. Anderson made the endorsement on the ship's register and it was made on the first trip from Cienfuegos.

24th. To the twenty-fourth interrogatory deponent answers:

I don't know that the "Adula" has ever tried to run the blockade at Guantanamo bay. The "Adula" has never attempted to run the blockade at Guantanamo.

25th. To the twenty-fifth interrogatory deponent answers:

The "Adula" has never been seized or condemned as a prize.

26th. To the twenty-sixth interrogatory deponent answers:

I have suffered no personal loss yet, but I will probably lose my position if the vessel is condemned; I will certainly lose my position and the emoluments pertaining thereto. I have received no indemnity for any loss that I have sustained, nor have I received any promise from anybody to this effect.

27th. To the twenty-seventh interrogatory deponent answers:

148 I don't know whether the vessel is insured or not.

28th. To the twenty-eighth interrogatory deponent answers:

No cargo on board.

29th. To the twenty-ninth interrogatory deponent answers:

No cargo on board.

30th. To the thirtieth interrogatory deponent answers:
No cargo on board.

31st. To the thirty-first interrogatory deponent answers:
The United States officers have all the papers relating to the vessel that I know of. They have searched through the ship three or four times, and I presume they have them all by this time.

32nd. To the thirty-second interrogatory deponent answers:
All of the papers were carried away by Captain McCalla, of the Marblehead.

34th. To the thirty-fourth interrogatory deponent answers:
There was no cargo on board, and there were no passengers on board the "Adula," and no passengers were secreted. There were no officers, soldiers, or mariners secreted on board of the "Adula." There were no citizens of the United States secreted on board at the time the "Adula" was captured. At the time the "Adula" was captured there was a citizen of Spain on board the ship—Mr. J. R. Solis; he was born in Cuba and is living there. Mr. Solis was supercargo on board the ship and he was coming back again to Kingston after making the trip. After going to the three
149 ports—Guantanamo bay, Santiago, and Manzanillo—he was to return with the ship.

35th. To the thirty-fifth interrogatory deponent answers:
All of the papers found on board the "Adula" are true and correct. I know of no matter or circumstance to affect their accuracy or credit. We had no passport or sea brief. The only paper we had was the bill of health, visaed by the Spanish consul at Kingston, Jamaica. I think Mr. Solis had a passport; of course, I didn't see that in Jamaica. I believe he showed Captain McCalla the passport; of course, I didn't take any notice about that. I do not know for what business he had that passport. The only papers that are in the United States belonging to the "Adula" were obtained from our boat, and they were on board the "Adula" at the time of the seizure. I know of no other papers being in the United States relating to the ship or cargo, except those taken possession of by Commander McCalla, that I know of. I have signed no papers concerning the vessel or her cargo. I have written one letter to the owners that was perused by Lieut. Anderson. That was only to inform the owners of our position. I wrote to Captain Forwood; he is the agent at Jamaica.

36th. To the thirty-sixth interrogatory deponent answers:
At the time the vessel was first taken she was steering for Guantanamo. The "Adula" didn't change her course when we first saw the war vessels; we just came right into the harbor. On leaving Kingston we didn't steer direct for the port of Guantanamo, as I said before, on account of not being acquainted with the land. I steered to the westward of the port we were bound to. I was not streering in a direct course, as you can see by the log book, on account of not being acquainted with the
150 coast line to the east of Santiago, so I steered to the westward. We just ran down the coast. We were sailing a little wide of the port to where the ship was destined. I don't remember

the course exactly that I laid for Guantanamo. I may have been a point and a half or two points off my course to the westward, with the object of picking up this land that I was acquainted with and then running down the coast to Guantanamo bay. I couldn't take any observations on that day, because it was cloudy, and I wanted to get to a point that I knew about. When I sighted land we were between Guantanamo bay and Santiago. I don't know how far we were from Santiago. I believe we went to within about ten miles of Santiago. I recognized the highlands around Santiago. I won't say it was ten miles; it might have been ten miles. Our course was not altered to any other port except Guantanamo; that was the point that we were steering for. I don't know at what time the ship's course was altered for Guantanamo; that information is down on the log book. We first made for the land that I knew, and then, when we made out the land, we altered the course and went down to Santiago. Previously to steering for Guantanamo bay I was steering to the westward, and I saw several ships there, and I imagined that I would be stopped by some of them, and I slowed down the engines, and I steered about a quarter of a mile in the direction towards Santiago. However, as I wasn't stopped, I turned around and steered direct for Guantanamo, but I was in the proximity of Santiago. My reason for changing my course was seeing the vessels at Santiago, and I expected to be stopped, and I changed my course from the west to the eastward, and then I changed around to the westward. The first time I changed around to the
151 eastward to come to these vessels, and when I found there was no vessels approaching us I then turned right around and turned to the eastward and hauled for the eastward for Guantanamo bay.

37th. To the thirty-seventh interrogatory deponent answers:

I don't know whether the "Adula" has ever been sold. I believe she was built for Forwood Brothers, and has always been owned by them. I know nothing about any sale. I do verily believe that the vessel would belong to Forwood Brothers if it was restored to the owners.

38th. To the thirty-eighth interrogatory deponent answers:

There were no guns mounted on the "Adula" and there was no ammunition on board belonging to her. There was nothing on the "Adula" intended for military equipment; there was on her only the ordinary signal rockets that we have on board. There were no implements of war or naval stores on board; no implements of war were thrown overboard or concealed; there were none there.

39th. To the thirty-ninth interrogatory deponent answers:

To the best of my knowledge and belief, the "Adula" is owned by Forwood Brothers and her destination was to Guantanamo bay for refugees, and then Santiago and Manzanillo and such other places that the charterer may desire to go to after we had visited those ports.

40th. To the fortieth interrogatory deponent answers:

The "Adula" has never been conveyed, to my knowledge.

41st. To the forty-first interrogatory deponent answers:

On going to Cienfuegos on the two first occasions that we
152 went there it was blockaded, and on the third trip there was no blockade there then. I was on board when we went to Cienfuegos; I was chief officer then, known as first mate. We went to Cienfuegos for refugees, and, as I said previously, we had a permit from Consul Dent, United States consul at Kingston, Jamaica; that was on the first two occasions. On the first occasion we were stopped by the "Marblehead," and on the second time we were stopped by the Castine; they ordered us to proceed to the Brooklyn, the flagship. On both those occasions we were allowed to pass; after talking to the captain for some considerable time, the captain allowed us to proceed. On the first and second occasions we had permits to enter Cienfuegos, and on the third visit to Cienfuegos we had no permit that I know of. When we went in on that occasion we were not stopped, because there was nobody there to stop us. The third trip was made, I think, about the 14th of June. On that trip we took some stores in. Captain Walker was in charge at that time. The "Adula" was chartered at that time by somebody in Cienfuegos. I do not know whether it was by a Spanish subject or not. I had nothing to do with the ship's business then. I know that Cienfuegos was supposed to be blockaded, but we hadn't seen any warships there for a considerable time, and that is the reason we went. I don't know whether a permit had been applied for on the third trip or not. There was one trip made to Santiago; there was nobody there to stop us at that time. I don't think there was any notice given of a blockade of Santiago; I don't recall any to my memory now. Those ports were blockaded by the United States of America. I knew that Cienfuegos was blockaded before we left Kingston on the first and second trip. I don't know whether
any notice was given as to the blockade being raised at Cien-
153 fuegos on our third trip. There certainly had been no warships there for a considerable time. The way I knew that was because I heard the captain say there was no warships there. I knew of no notice being given of the blockade at Cienfuegos. As to Santiago, I don't know whether that place was supposed to be blockaded or not; we saw no warships when we entered Santiago, and we saw none when we left; there were no warships there at all that we saw. We were warned by the captain of the "Yankee" after leaving Cienfuegos the third time. After leaving Cienfuegos we were stopped by the steamship Yankee, about 70 miles south of Cuba, and the captain examined our papers and told us not to return to Cienfuegos again; he didn't warn us as to any other port in Cuba. We were warned as to Cienfuegos when we had our register endorsed on the third trip. No officer from the "Yankee" made any endorsement on our register. No information was given me as to Consuls Dent refusing to give us permission to go to Guantanamo. Mr. Solis has told me since the capture that Consul Dent had refused to give him permission to go to Guantanamo; he never told us anything before we left; he just came on board, and we sailed immediately. We had no passport on this trip; we only had our letter of information, which stated that we would probably

meet warships, and gave information as to what was to be done about the ship. As to the extent that Captain Walker was warned, or whether he was warned at all, I cannot say. I received no warning as to the blockade until we were seized in Guantanamo bay by Commander McCalla. Nothing was said by the officer on board the Vixen except to tell us to proceed; he was just passing out, and didn't even stop his engines, and he asked us where we were bound, and we said to Guantanamo, and he said, "Proceed." He
154 was bound towards Santiago, and didn't seem to have much time to stop.

42nd. To the forty-second interrogatory deponent answers:

The "Adula" has never had any letters of marque or reprisal on her, to my knowledge.

43rd. To the forty-third interrogatory deponent answers:

The "Adula" has never sailed with any armed vessel in cruising against or pursuing or seizing as prize any person, vessels, or property of the citizens of the United States.

44th. To the forty-fourth interrogatory deponent answers:

I have no relatives in the Spanish military or naval service.

ROBERT WILLIAMS YEATS.

Answered, subscribed, and sworn to before us this July 23, 1898.

A. E. K. DENHAM,
Rear Admiral U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

Endorsement: In U. S. district court, eastern division of so. dist. of Geo. United States *vs.* Steamship Adula. Prize. Interrogatories of R. W. Yeats. From sealed package from prize commissioners. Opened by the court and now, July 27th, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

155 UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division.

In re the "ADULA." Prize Cause.

The deposition of Jose R. Solis, a witness produced, sworn, and examined *in preparatorio* on the 22nd day of July, in the year 1898, at the United States court-room, Savannah, Georgia, on the standing interrogatories established by the district court of the United States for the southern district of Georgia, the said witness having been produced for such examination by the United States attorney in behalf of the United States and the captors of a certain ship or vessel called the "Adula."

1st. To the first interrogatory deponent answers:

I was born in a little town near Havana called Santiago de las Vegas. I now live at Manzanillo, on the south coast, in the province

of Santiago de Cuba. I have lived there ten years next January. I am a subject or citizen of Spain and owe allegiance to Spain. I am married; my family and wife reside at Manzanillo.

2nd. To the second interrogatory deponent answers:

I was present at the time of the capture or taking of the vessel.

3rd. To the third interrogatory deponent answers:

156 The taking of the vessel was in Guantanamo bay, June 29th, 1898. She was carried to Savannah. She had no commission or letters allowing her to make prizes. I cannot tell why the seizure was made.

4th. To the fourth interrogatory deponent answers:

The "Adula" sailed under the English flag. I don't know that she had any other colors. I left on the 28th. I suffer a great deal from seasickness, and as soon as we left Port Royal, off the bay of Kingston, I went to bed and only left bed when we arrived off Guantanamo. When we left she had the English flag, and when we arrived at Guantanamo she had the English flag, and I know of no other flag.

5th. To the fifth interrogatory deponent answers:

No resistance was made at the time of the capture; no guns were fired. When we arrived off Guantanamo—I suppose two or three miles out of the bay of Guantanamo, perhaps more, about four or five miles—we met an American gunboat, which asked us where we were going. We said to Guantanamo. They said, "All right; go on." That is what I heard. So we went a few miles more, and we were in front of the bay and the steamer whistled some times; I don't remember the number of times. I asked what they were whistling for, and they said for a pilot. About 20 minutes afterwards we saw a boat coming. I asked who was coming, and I saw a young gentleman. They told me he was an officer from the United States Navy, with a pilot. I thought the pilot was a Cuban or a Spaniard, because I spoke a few words to him in my own language. I don't know the name of the ship we first met. The ship that made the capture was the "Marblehead." There were

157 several other ships in sight at the time, the names of which I don't know. I read the name of one, the "Solace," with the red and white cross. The "Adula" was a merchantman; the "Marblehead," I think, was a man-of-war; she looks like it.

6th. To the sixth interrogatory deponent answers:

I don't know whether the capturing vessel had any commission to act in the seizure of the "Adula." They put some guards on board the "Adula," with rifles. She was not condemned at all.

7th. To the seventh interrogatory deponent answers:

The "Adula" was the name of the vessel taken. The name of the captain was Yeates. I suppose the Atlas Steamship Company—they are the owners of the vessel—appointed him captain in Kingston. I first went on board the "Adula" June 28th, 1898, in the afternoon, between half past 5 and 6 o'clock. I have seen her in the port of Kingston before. I have known her by sight since the 28th of April, at which time I saw her 5 or 6 miles off, and was told it was the "Adula." The first time I knew the "Adula" was

when I came on board. I don't know when and where Captain Yeates took command of the "Adula." I understood Captain Walker, the previous captain, had a stroke of paralysis. Captain Forwood, of the Atlas Steamship Company, delivered her to Captain Yeates. The fixed abode of Captain Yates is Kingston. I understand he lives in Kingston. I think his wife and family live there. I don't know how long he has lived there. I understand he was born in England. I have heard he was an Englishman. I heard him say so.

8th. To the eighth interrogatory deponent answers:

158 I cannot tell you the tonnage or burden of the vessel. At the time the "Adula" was taken there was 35 composing the ship's crew, and they were all on board when she was taken. They are, I think, all English, except me. I don't know whether they came on board at the same time. I was the last to arrive on the vessel. I don't know who shipped or hired the crew; I suppose the owners did.

9th. To the ninth interrogatory deponent answers:

At the time of the seizure of the "Adula," I belonged to the ship's company. When I left Kingston they asked me whether I would like to go as a passenger or enlist. I said, I didn't know. They said, "You had better go on the articles." So they took me to the custom, house, and I signed as supercargo, and I came as such supercargo, and I think I belonged to the crew since I signed the articles as supercargo. At the time of the capture of the "Adula" I had no interest in her except I was the charterer. I cannot answer as to others.

10th. To the tenth interrogatory deponent answers:

I have known the "Adula" about two months. I first saw her at sea. I was in an English schooner, going from Manzanillo, in Montejo bay, on the north coast of Jamaica. I asked who she was, and they told me she was a coaster. That was between the 28th and 30th of April, about. The "Adula" had no guns that I know of; there was no engagement at the time of her capture. By the plate I saw on her; she was built in Belfast. I don't know how long she had been called the "Adula." I don't know of any other name by which she had been called.

11th. To the eleventh interrogatory deponent answers:

159 The "Adula" was bound to Guantanamo, on the voyage she was taken; from there to Santiago, thence to Manzanillo, thence to Kingston. The voyage began at Kingston, on the 28th at half past 5; it was to have ended in Kingston. She carried no lading at the time of her first setting out on the voyage. I don't think she had any except coal for the trip; she had water ballast. I remember being in the office of the Atlas Steamship Company, and Capt. Forwood called out to one of his clerks to put on sufficient coal for 850 nautical miles; that was after we signed the charter-party. At the time she was taken and seized she had the same cargo, only water ballast and coal; the coal was not as a cargo. I would have known if she had had a cargo on board. I chartered all the vessel. She was not allowed to take a cargo. I cannot tell

whether that was specified in the charter. I think it is specified. She was only to take passengers and no cargoes. I don't think she had on board on that voyage any goods contraband of war.

12th. To the twelfth interrogatory deponent answers:

I don't think the "Adula" had on board any passport or sea brief when she was captured. When I tried to make this trip they told me that the owner of the "Adula" had decided to charter the vessel, if I got from the Spanish consul permission to go into those ports. I went to him and explained to him the kind of voyage we were going to make. I asked him to give me a passport to the Spanish authorities in those ports, to allow me to go in and take passengers, refugees; so he gave me that authority, it being for the sake of humanity, to take those refugees off. I had no other passport. I went to the American consul, Dent, with a letter of introduction from an American gentleman I knew in Trinidad, on the south coast
160 of Cuba—a Mr. Stillman. He was a friend of mine. I explained to Mr. Dent the idea of my voyage. He told me he was sorry he could not give me the passport I wanted, because he was not allowed to give such passports unless he had permission from the American authorities in Washington. As I was going to leave two hours afterwards, he said there was no time to ask permission. I said, "Look here, Mr. Dent, I don't think there is anything wrong, because my intention is to go to Guantanamo and ask permission of the American admiral to allow me to go. If he does not allow me I come back." Then I went to see Mr. Forwood, the agent of the Atlas Steamship Company. I explained what Mr. Dent had told me. He said, "Look here, Solis, I don't think there will be anything wrong, because, besides what you say, I will give the captain a letter with full instructions about what he will do, and this letter you may show to the United States naval officers, and, of course, they will see you go with the purpose of taking passengers and with no other purpose." When I chartered her she had a part of her cargo on board, and Mr. Forwood ordered that portion of the cargo taken off. During her last voyage she sailed direct to Guantanamo and to no other place; we went right to Guantanamo; she went by no other port; we went in sight of no other port. Her last voyage began at Kingston and was to have ended at Kingston. Before this the vessel used to carry a general cargo on the coast to all the ports around the coast of Jamaica. She used to sail from Kingston and go the round trip to all the ports of Jamaica. One time she would go to the west side of Jamaica and then to the east coast. I think she has been going to Cuba to bring passengers.

13th. To the thirteenth interrogatory deponent answers:

161 There was no cargo on board.

14th. To the fourteenth interrogatory deponent answers:

At the time of the capture the owners of the vessel were the Atlas Steamship Company. I know that, because I was told so, and I entered into a contract with them. They are Englishmen. I don't know how long they have resided at Kingston. They are subjects and citizens of England.

15th. To the fifteenth interrogatory deponent answers:
I don't know of any bill of sale being given.
16th. To the sixteenth interrogatory deponent answers:
No cargo on board.
17th. To the seventeenth interrogatory deponent answers:
No bills of lading were on board.
18th. To the eighteenth interrogatory deponent answers:
I have no papers of any kind in my possession. Those I had I delivered to Captain McCalla at the time the "Adula" was captured. I don't know whether there were any papers on board showing my interest in the vessel. I had one copy of the charter-party and the captain had another copy. The charter-party was executed on the 28th of June, 1898, in the morning, in Kingston, in the office of the Atlas Steamship Company. I had to deposit in the Colonial bank one thousand pounds as a guarantee of my part of the charter-party. I had to pay one hundred pounds for every day the vessel was employed in the round trip. In case the vessel was detained I think there was an article I wanted to be put in it that those days would not be counted; I don't remember well. There was no
162 promise on my part to stand any loss for being held up. I did not guarantee the safety of the vessel from capture. I did not promise to shield the owners of the vessel in case she was captured. I last saw the papers on the 29th, when they were delivered to Capt. McCalla, of the "Marblehead." I delivered him all my papers.
19th. To the nineteenth interrogatory deponent answers:
I cannot state the degree of latitude or longitude in which she was captured. We arrived in front of the bay of Guantanamo and then we called for a pilot and they sent us a pilot, with an officer, and this pilot took us into the bay. I suppose the person who sent that pilot was the captain of the "Marblehead." I understand he was the chief there. Then the officer and pilot ordered us to anchor there. While we were at anchor a boat came, I think, from the Marblehead, with Captain McCalla and an officer, whose name is E. A. Anderson. They told us the ship was captured. They asked me for my papers. I gave them all I had. Captain McCalla asked me if they were all. I said, "I think they are all. There may be some in my room." I don't remember, because sometimes you leave papers in your room and you don't remember, and after that he ordered two men to guard me and I was kept there until we left. Those men had rifles and were always watching me. That was on the 29th. We arrived off the bay about 4 o'clock. We stayed there about a half hour, waiting for the pilot. We whistled again and then the pilot came and we went inside about half past 5 or 6. I was the charterer. I and Captain Forwood, the agent of the Atlas Steamship Company, signed the charter. He gave me one copy and kept one. That was on the 28th, in the morning. I gave that to Captain McCalla. The charter-
163 party was drawn up on the typewriter. I cannot give the contents except in a general way. My idea was to take passengers from Guantanamo, Santiago, and Manzanillo and take my

wife and family from Manzanillo. The term was ten days and I was to pay one hundred pounds every day, and, supposing the trip was made in less than 5 days, five hundred pounds. I am not sure, but I think I remember after signing the charter-party there was an addition made to it, in which I stated if the vessel was stopped for any reason which was not in my power, then those days were not to be counted.

20th. To the twentieth interrogatory deponent answers:

At the time the vessel left Kingston I remember very well I told the purser in the office of the Atlas Steamship Company—I remember saying to the company not to take any letter for Cuba. I did not want to be compromised with letters. When I went to leave the hotel some friends came after me to deliver for them some letters. I said, "No, my friends, you compromise me," and they said, "No," and one or two of those letters were closed or opened. I had authority to open any of them. When Captain McCalla came I delivered them to him. Those were private matters, I suppose. There were no other papers that I know of. I know that the captain delivered many papers to Captain McCalla. I do not know what the character of the papers was that the ship carried. Referring to all writings of every kind on the "Adula" when she was taken, none were burned, torn, thrown overboard, destroyed, cancelled, or attempted to be concealed.

21st. To the twenty-first interrogatory deponent answers:

I knew that there was a condition of war existing between
164 America and Spain on the 21st. They told me on board the "Adula" that the blockade of Guantanamo was published on the 27th, the day before. I had not heard it before I left Kingston. I did not know officially Guantanamo was blockaded. On board the "Adula" I heard that on the 27th there was issued an order from the President of the United States declaring a blockade of the port of Guantanamo, but I did not know it until we arrived at Guantanamo. At Kingston I heard there were some warships at Guantanamo, and I told Captain Forwood that the first thing I would do would be to go to the admiral and tell him my intentions. I did not think the papers in Kingston published the blockade. I did not see it if they did. The people generally did not talk about it. I read something about "McCalla's camp." I understood Guantanamo was not blockaded by the United States. I heard that marines had been landed at the entrance to Guantanamo, Caymenera—the bay is called Caymenera—and that the marines had possession of the port, and that the ships were inside. I cannot tell when I received the information that marines had been landed there and taken possession of the point of Guantanamo or Caymenera. Perhaps it was one or two days before. I don't know what the others knew about a state of war existing. I understood Guantanamo was not declared officially blockaded, although there were some vessels there. I got that information from newspapers in Kingston, and from those newspapers I got the information that marines had been landed at the entrance to the bay on the east side; they call it "East point." I don't know when I got the informa-

tion, but think it was the day before the vessel left Kingston. I was at Kingston when I obtained that information; it was Monday, and I left on Tuesday.

165 22nd. To the twenty-second interrogatory deponent answers:

At the time the "Adula" entered or made the attempt to enter the port of Guantanamo, Capt. McCalla told us that the blockade had been declared officially on the 27th. No warning or notice of such blockade had been given to or received by me until the vessel was seized. We found a gunboat going out of the port; the captain asked us where we were going; we said, "Guantanamo," and they said, "All right; go on." That was 5 or 6 miles off. I don't think that vessel said anything about tha blockade. That conversation was between the captain and some one on board the gunboat. I heard part of the conversation. I was on board of the vessel of which I was the charterer. I don't know exactly if there was anything else said. At Kingston the American consul told me, when I asked permission to go to Guantanamo, Santiago, and Manzanillo, that he could not give me such permission; that only the authorities in Washington could give such permission. As I was going to leave that same day, and he said, "I don't think they will give you permission." I said, "Look here, Mr. Dent, as long as I don't go into anything bad; I have seen some telegrams from people there asking for vessels to bring their families, and I think I could go and get the parties; I don't intend to run the blockade or anything of the kind; I don't intend to get a cargo; if you don't give me permission, I think the admiral, after I get to his presence, he will not refuse me to go in, and if he refuses I will come back; I won't attempt to do anything against the American authorities." I was not aware of the blockade of Santiago. I knew there were vessels there. I knew Manzanillo was not blockaded; I am not sure of Santiago, but I am sure about

166 Guantanamo and Manzanillo, and even being blockaded I thought that he or the admiral would give me permission to go there and get refugees, because I did not see there was anything wrong to the United States in bringing refugees that wanted to get away from the path of the war. On the contrary, I thought it was a good thing to take people from the centre of the war. Even as I was doing it upon business principles, at the same time there was a kind of humanity in it. I don't mean to say I did it only from humanity; it was business. I also wanted to bring my family from Manzanillo. Captain McCalla thought I was a spy. Nobody can prove anything on me. I have been in Cuba in a peculiar way. I never went in politics, and I was French consul. They wanted me to be mayor of the town. I told them no; I was French consul. I used to go into the country 15 or 20 miles from the city, and country people always treated me nicely. The people I have in my saw-mill all know me very well. After General Weyler came in the country I could not go in the country any more, because I feared that General Weyler might suspect me of being an insurgent. I don't know anything about any warning or

notice given to the owner, master, or commandant of the ship. I remember that I went to Captain Forwood and told him the American consul would not give to me, as he did to some others, permission to bring refugees, and Captain Forwood said he had already written a letter with full instructions to Capt. Yeates, in which instructions he was explaining clearly the purpose of the vessel, so that all American authorities would know that the vessel was not going to do anything wrong, but only for a good purpose, and I understand this letter was given to Capt. Yeates. I know nothing of any notice of blockade being given to any captain or the owner or the commandant. I don't know whether notice in writing
167 had been endorsed on the register or other ship's papers.

23rd. To the twenty-third interrogatory deponent answers: I don't know whether the register of the "Adula" was shown to or examined by any officer of the navy or revenue officer before she was captured or before she entered the port at or near where she was seized. I don't know whether the ship's register or papers are endorsed by such officer.

24th. To the twenty-fourth interrogatory deponent answers: I don't know and don't believe that the "Adula" has at any time after the blockade of the port of Guantanamo and with notice thereof ever attempted covertly or secretly to enter such blockaded port or to sail from there without success.

25th. To the twenty-fifth interrogatory deponent answers: The "Adula" has not to my knowledge been seized or condemned as a prize.

26th. To the twenty-sixth interrogatory deponent answers: I lose one thousand pounds and my time from the 28th, and I don't know what has become of my wife and children. They told me that Manzanillo was bombarded and everything destroyed. My calculation was, supposing the admiral allowed me to go into Santiago or Guantanamo and to bring my family from Manzanillo, that I could bring 400 passengers. At $60 each, makes $24,000, and my idea was to make the trip in six or seven days. Supposing it took me ten days, it was $19,000 net benefit. I had done it before with two English schooners? Once I took 130 from Manzanillo
168 and Montejo bay. I have received no indemnity, satisfaction, or promise of satisfaction for any part of the damage I may sustain by this capture and detention.

27th. To the twenty-seventh interrogatory deponent answers: I don't know whether the vessel is insured.

28th. To the twenty-eighth interrogatory: There was no cargo on board.

29th. To the twenty-ninth interrogatory deponent answers: There was no cargo on board.

30th. To the thirtieth interrogatory deponent answers: There was no cargo on board.

31st. To the thirty-first interrogatory deponent answers: You have all the papers.

32nd. To the thirty-second interrogatory deponent answers: When we arrived at Guantanamo, Captain McCalla asked me for

all papers and he has all my papers, and he asked the captain for his papers. I know the captain gave him some, but afterwards I remember Mr. Anderson asked the purser for some more papers, and the purser gave him, I think, the register, and when we arrived here two days afterwards, Mr. Anderson, the naval officer, came again and made a search and took some more papers—not mine, because mine were all delivered, but from Captain Walker, who was the previous captain.

33rd. To the thirty-third interrogatory deponent answers:

No cargo was on board.

34th. To the thirty-fourth interrogatory deponent answers:

No passengers were on board the "Adula." I was not a
169 passenger, since I am considered on the articles. No passengers were secreted on board at the time of her capture. I had no duties to perform, only to have my meals and to sleep. I was not told exactly what duties belonged to a supercargo. I don't know that I did anything on board. They treated me very nicely. I took my meals at the table with the captain. They gave me a room to myself. I had no duties. No officers or mariners were secreted on board. No citizens of the United States were on board or secreted at the time of the capture. I, J. R. Solace, was a citizen of Spain at the time the "Adula" was captured. I am of Cuba. My employment was supercargo and charterer. My destination was to go back to Kingston with the vessel. I signed the articles for the round trip.

35th. To the thirty-fifth interrogatory deponent answers:

I only know about my papers. I know they were true. I don't know anything about the vessel's papers. I know of no matter or circumstance to affect their credit. I had a document, about which I told you before, that I obtained from the Spanish consul in Kingston, in which document it says to the authorities of any Spanish port where the "Adula" may go to allow Mr. Solis to take out passengers, since he does it for the sake of humanity. That is what I understand it says on the paper. The day before we left I saw in the Gleaner, a newspaper published in Kingston—there was an article saying that some gentleman called on the Spanish consul asking permission to allow a vessel or steamer to go to Santiago and bring families away, and the Spanish consul would not give such a paper, and then they added, "It is not nice. They ought to allow it
for the sake of humanity." I went to the Spanish consul and
170 told him I had chartered the "Adula" and asked if he would give me that document. He said he was not allowed to give such a document, unless I could be able to take some cargo. I showed him the paper, and I told him I could not take a cargo, because if I was to take a cargo the American authorities would not allow me to go. If I took no cargo, but went for the sake of humanity, any American vessel, perhaps, would allow me to go into those ports. Then after a long talking he says, "All right, come tomorrow, and I will give you this paper;" that is all that happened. The next day I went, and he gave me this paper. The passport was for the "Adula" only. I had to take no oath in order to

get the passport. It was given to me by the consul himself, in the presence of the vice-consul. The passport was to last only for the trip. No duty or fee was payable or paid for the same. There is no duty or fee to be paid on the renewal thereof. Such passport has not been renewed. The vessel was in the port where the passport was granted—Kingston—at the time. In fact, the owners of the vessel would not charter her unless I could get a passport. No person on board has any passport, license, or letters of safe conduct that I know of. I don't know of there being any other bills than those in the hands of Lieut. Anderson and Commander McCalla. Admiral Sampson, after having conversation with me and asking me some questions, asked me if I wanted my papers. I said, Of course, there were some private things, family matters, and business, etc., and I would like to have my papers; so after a few minutes he said, "I am going to deliver them to the United States, where you are going, and I am sure they will deliver them to you after the matter is settled." I had not written or sent any
171 papers concerning the vessel or her cargo, except the charter-party, or signed any. I signed two charter-parties, one to remain in the hands of the owner of the vessel, and the other one was given to me. The one I had was delivered by me to Commander McCalla, of the Marblehead. The other one, I don't know what became of it.

36th. To the thirty-sixth interrogatory deponent answers:

At the time the vessel was taken she was steering her course towards Caymenera. The direction in which she was going was not changed at the time we saw the capturing vessel. The "Adula" was at anchor at the time the capture was made. I was told that the captain of the Marblehead already knew we were going into Guantanamo, because consul Dent had sent telegrams from Kingston. Her course at all times when the weather would permit was directed to the place or port for which she appears to have been destined by the ship's papers. I was seasick in my room, suffering very immensely. I went to bed when we left Kingston, and didn't get out of bed until we arrived at Guantanamo bay. The orders given to the captain were to go straight to Guantanamo. I had no right to direct the captain. We agreed that the vessel would go from Kingston to Guantanamo, from Guantanamo to Santiago, and from Santiago to Manzanillo. If I was to state to the captain to go here he would say, "You have no right to direct me." I did not have the right to direct them to any particular port. We were not trying to take in ports on our way. If I could not get to Santiago I had to go to Manzanillo. I had no right to direct the navigation of the boat. The only right I had was to direct it from Kingston to Guantanamo, and from Guantanamo to Santiago,
172 and from Santiago to Manzanillo, and from Manzanillo to Kingston. At the time of her capture or before I believe the vessel was not out of her direct course to the port she was destined by the ship's papers. Her course was not changed at any time. I remember that the purser came to my room when he was passing by. He said, "Look here, Solis, we can see already some

vessels." Although I was sick I wanted to see some American men-of-war. I had never seen any and I went out to look, and they were off about ten or 12 miles. We didn't get any closer. I don't know whether the course was changed or not.

37th. To the thirty-seventh interrogatory deponent answers:

I don't think the vessel has been sold. I know of no sale. I thoroughly believe that if the vessel should be restored she would belong to the persons now asserted to be the owners and none others.

38th. To the thirty-eighth interrogatory deponent answers:

No guns were mounted on board the vessel and no arms or ammunition were on board, I don't think. The day following our arrival at Guantanamo they sent a launch with 15 or 20 sailors, and they went around looking all over the vessel's boilers and everything. From what I heard they did not find anything. I do not know that there were any arms. There was no sort of warlike stores or naval stores on board and none were thrown overboard to prevent suspicion at the time of the capture, and none were concealed on board at that time.

39th. To the thirty-ninth interrogatory deponent answers:

My real belief of the ownership of the vessel is the Atlas Steamship Company. The destination was Guantanamo—from Guantanamo to Santiago, from Santiago to Manzanillo, and from
173 there to Kingston. Once in Kingston the voyage was accomplished.

40th. To the fortieth interrogatory deponent answers:

The "Adula" on the voyage on which she was captured and on no former voyage or voyages sailed in company of any armed ship. I had no instructions as to what to do with the ship's papers should an attempt be made to capture the "Adula," and had no instructions to resist capture.

41st. To the forty-first interrogatory deponent answers:

The "Adula" did not in the voyage during which she was captured sail to any blockaded port except Guantanamo, which she asked permission to enter. I know nothing about any former voyage. I know she has made other voyages to Santiago and Cienfuegos, but I don't know the particulars. I know she was doing that business regularly; she had made 4 or 5 voyages. I first learned and heard of the port of Guantanamo being blockaded when Capt. McCalla said it had been officially declared blockaded on the 27th. I have answered you what I learned from the American consul. I knew there were troops and vessels in Caymanera bay, or Guantanamo bay, as you call it. I knew that perhaps the day before. I don't remember exactly. I don't remember anything about the order of the President declaring the blockade. I did not know anything officially until I arrived at Caymanera, or Guantanamo. The Daily Gleaner said some troops had been landed at Playa del Este. I knew by what I saw in the papers that there were vessels and such things around Santiago. I don't know much about these international

things. I went to see Consul Dent with a letter of in-
174 troduction from a friend of mine called Stillman. He owns an estate in the south of Cuba, at a place called Trinidad. I went to Consul Dent's office and asked permission to go to those ports. He asked me whether I had the consent of the Spanish consul. I said I had it. Then he said to me he was sorry he could not give me such permission; that he was not allowed to give such permission; that it could only come from Washington, from the Government. I saw there was no time to get permission from Washington, and being under an expense of one hundred pounds every day, and thinking there was nothing wrong in taking refugees from Cuba, I thought — going direct to the United States navy and asking permission from the admiral or commodore or whatever chief I met. I did not think they would refuse me permission to go. I had information there were United States vessels on the south coast of Cuba. Of course, their object was to do as much damage as they could to the enemy. Mr. Dent told me not to go. I don't remember his giving any particular reason for not going. I told him those voyages had been made at other times, and that it not being my intention to take a cargo, but my only idea was to bring refugees. I showed him the paper published the day before, in which they stated the Spanish consul would not give permission, and that it was not nice, etc. Mr. Dent did not give me any reason why I could not go there. He told me not to go, and I answered to him that I was not going for anything wrong. He said to me he could not give me permission. Then I said to him, I decided to go, and I don't think there will be any harm for me, since I didn't go for any bad thing, but only to bring refugees. I did not think I did any harm to the United States in that. I
don't remember Mr. Dent telling me the vessel would be
175 liable to capture. He said I ought not to go, and that he could not give me such permission. I remember one part of Mr. Stillman's statement was, "I think they should give you permission, because it is for the sake of humanity." Mr. Dent and I had a long conversation, but only referring to business in Cuba, and I began to explain my own idea and what would become of Cuba. He asked me the situation in Cuba and what I thought. We were talking friendly. Under ordinary circumstances it would not be necessary for me to get permission from Mr. Dent, because Capt. Forwood told me he never thought it necessary to get permission of the consul, since it was not a business matter, such as bringing a cargo or wrong things. I went to the consul, induced by a Cuban gentleman called Miranda, that I think is employed there or receives favors from the consul. That gentleman made an appointment with me for 2 o'clock in the consul's office. When I went to the consul's office I was nearly satisfied of obtaining that permission, because I thought this gentleman, Mr. Dent, had given permission at different times of the same kind. If I had known he was not going to give me such permission I should not have lost my time in going, and since Capt. Forwood, of the Atlas line, told me he didn't consider there was any danger in going for refugees. It

was 2 or 3 hours after the conversation with Mr. Dent that I sailed. I went to the office of the Atlas line, and went to the hotel and got my meal and luggage. About me personally, Consul Dent knows very well I am not to be suspected. A few days before I left Manzanillo a general who was there found that an American gentleman was suspected of keeping up correspondence with the enemy. He was compelled to leave town with his family within 24 hours. He had no money, and there was no vessel leaving Manzanillo. He was
176 obliged to go to prison or go to the insurgents. He did not want to go to the insurgents. He asked me would I be responsible for him. I said, "It is very hard. I know you have two sons; one of them wanted to go to the insurgents. You see, the responsibility is upon me if one of your sons goes to the field." He promised me, and then I went to see the general, and held myself responsible for the American citizen, that he would be quiet there and do nothing until the first foreign vessel should sail from Manzanillo to a foreign port. Five days afterwards there was a foreign vessel, and I shipped them on that vessel. When the war began the American consul wanted to deliver to me all the documents belonging to the consul. I accepted. Four days after I had decided to accept I was compelled to ask permission of the French consul general, and, four days after, he sent me word, "Refused absolutely."

42nd. To the forty-second interrogatory deponent answers:

I know nothing of any prior voyages or any letters of marque or reprisal.

43rd. To the forty-third interrogatory deponent answers:

The "Adula" never, to my knowledge, sailed or acted in company or concert with any armed vessel or vessels in cruising against, pursuing, or seizing a prize, any persons, vessels, or property or citizens of the United States.

44th. To the forty-fourth interrogatory deponent answers:

We have seven in the family. They are all civilians. One brother is a lawyer; the other two are younger and were with me as clerks in my lumber business. They did not behave nice to me. I was obliged to go to Havana for 2 or 3 months. They spent too
177 much money. We had a little family quarrel and both went to Havana. I know when they went to Havana they were employed by one of my uncle's houses, the Marquis Rabell. I have no relations in the army or navy of Spain. Perhaps after that time my brothers may have gone into the volunteer service.

JOSE R. SOLIS.

Answered, subscribed, and sworn to before us this July 22, 1898.

A. E. K. DENHAM,
Rear Admiral U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

Endorsement: In U. S. district court, eastern division of so. dist. of Ga. United States *vs.* Steamship Adula. Prize. Interrogatories

of Jose R. Solis. From sealed package from prize commissioners, opened by the court and now, July 27, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

178 *Deposition of Horatio Morris.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division.

Deposition of Horatio Morris, a witness produced, sworn, and examined *in preparatorio* on the 21st day of July, in the year 1898, at the United States court-rooms, Savannah, Georgia, on the standing interrogatories established by the district court of the United States for the southern district of Georgia, the said witnesses having been produced for the purpose of such examination by the United States attorney in behalf of the United States and the captors of a certain ship or vessel called the "Adula."

1st. To the first interrogatory the deponent answers:

I was born in Jamaica in 1872, and I have lived there ever since. I live in Kingston, Jamaica. I am a British subject. I am not a citizen of the United States of America. I am not married.

2nd. To the second interrogatory the deponent answers: I was present when the "Adula" was captured by a United States warship.

3rd. To the third interrogatory the deponent answers: When the "Adula" was captured she was just abreast the harbor's mouth of Guantanamo, Cuba. I think the "Adula" was captured on the 29th of June. I don't know whether the "Adula" had letters to capture other ships. I don't know why the "Adula" was seized.

4th. To the fourth interrogatory the deponent answers:

The "Adula" sailed under the English flag. The only flags that I saw was the company's flag and the ensign.

5th. To the fifth interrogatory the deponent answers:

There was no resistance by the "Adula" when she was seized by the United States men-of war. The "Marblehead" made the capture. I don't know whether there were any other warships in sight. The "Adula" is a merchant ship; the "Marblehead" is a warship.

6th. To the sixth interrogatory the deponent answers:

I don't know whether the "Marblehead" had any right to seize the "Adula" or not. The "Adula" has never been condemned, as far as I know.

7th. To the seventh interrogatory the deponent answers:

179 The name of the vessel captured was the "Adula;" the name of her master was Captain Yeates. I think Captain Forwood, at Kingston, Jamaica, appointed Captain Yeates to command the "Adula." I have known the "Adula" for four years. I have known Captain Yeates for about two years. Captain Yeates came aboard of the "Adula" at Kingston. I don't know who delivered the "Adula" to Captain Yeates. Captain Yeates lives in

Kingston, Jamaica; his wife and child live there also. Captain Yeates is an Englishman, but I don't know where he was born.

8th. To the eighth interrogatory the deponent answers:

I do not know of what tonnage the "Adula" is. I do not know how many people there were in the ship's company; I can't tell that exactly. Every person that came on board at Kingston, Jamaica, was on board the "Adula" when captured. Some of the "Adula's" crew are from Jamaica and some from Nassau. There was also a passenger on board. I don't know what his nationality is; some say he is a Spaniard and some say he is a Cuban. All that were on board of the "Adula" when she left Kingston were on board when she was captured. Some of the men on the ship have been there for three years, some four years, and some have been there only six or seven months. They came on at various times. The government shipped us and Captain Forwood hired us; he is the master of the ship. Captain Yates took us on as sailors. I have been with the "Adula" for about three years. The one who hired me first was a mate by the name of Mr. Rice.

9th. To the ninth interrogatory the deponent answers:

I did belong to the ship's company at the time the "Adula" was captured in Guantanamo harbor. I was a sailor. I have no interest or share in the ship. I don't know whether any of the mariners of ship's company have any share in the ship.

10th. To the tenth interrogatory the deponent answers:

I have known the "Adula" about four years now. The first place I saw her was in Kingston. The "Adula" does not carry any guns at all. The Adula is an English boat. I don't know how long she has been called the "Adula," but I have known her about four years, and she has had that same name ever since I have known her.

11th. To the eleventh interrogatory the deponent answers:

180 The "Adula" left Kingston, Jamaica, for Guantanamo. The voyage was to have ended in Kingston, after she had reached Guantanamo. After she has reached Guantanamo I don't know where she was to go after that. The only load she had on board when she left Kingston was some coal, nothing else; she carried coal, but I don't know whether it was to be sold or not. The "Adula" carried no load at all; there were no goods on board at all.

12th. To the twelfth interrogatory deponent answers:

I don't know anything about any papers that the "Adula" had. The "Adula" left Kingston to go direct to Guantanamo and she went direct to Guantanamo; she didn't go to any other port and didn't get in sight of any other port. All the time she was sailing I was all around the deck. The "Adula's" last voyage began in Kingston, Jamaica, and was to have ended in Kingston, Jamaica. When the "Adula" coasted around the island of Jamaica we carried all kind- of fruit, wet goods, and dry goods. The first place we get to is Port Antonio. I don't know that she made any other trip except over to Cuba. Since I have been aboard of the "Adula" I have made four trips in her to Cuba. This trip to Guantanamo

makes the fourth one. I went four times to Cuba. The first place I went to was Santiago. I went twice to Santiago, once to Guantanamo. This is the first time we went to Guantanamo. There was another port that we went to; that was Cienfuegos. When the boat went to Cuba she went in to take refugees. When we went to Santiago, Cienfuegos, and Guantanamo we didn't take any cargo aboard, but we did put on board goods when we went to Santiago and Cienfuegos; they were marked "ship stores;" there were boxes, barrels, and bags; I handled them and they were heavy. I don't know whether they put any of these goods ashore when we came to Santiago and Cienfuegos. I was around the deck and I didn't notice them. I haven't heard of any goods that were put on shore.

13th. To the thirteenth interrogatory deponent answers:

The only cargo that the "Adula" had on board when she went on this last trip to Guantanamo was coal.

181 14th. To the fourteenth interrogatory deponent answers:

I think Captain Forwood owns the "Adula." He usually comes on board the boat and goes around the boat and gives orders, and it must be from that that he owns it. I don't know what nationality Captain Forward is; he lives in Jamaica; I don't know where he lived before he came to Jamaica; I don't know where he comes from; I don't know of what country he is a subject.

15th. To the fifteenth interrogatory deponent answers:

I know of no bill of sale being made for the "Adula." I don't know of any trade being made to sell the "Adula."

16th. To the sixteenth interrogatory deponent answers:

No cargo on board.

17th. To the seventeenth interrogatory deponent answers:

No cargo on board and no bills of lading pertaining thereto.

18th. To the eighteenth interrogatory deponent answers:

I have no papers in my possession of any kind relating to the Adula. I have no papers in my possession showing any particular interest of any person in the "Adula."

19th. To the nineteenth interrogatory deponent answers:

The "Adula" was captured on June 29th between three and four o'clock—about—in Guantanamo harbor's mouth. I heard that a man aboard the ship, named Solis, was the charterer of the "Adula." I never have seen the charter party.

20th. To the twentieth interrogatory deponent answers:

I don't know what papers were on board the "Adula" when she left Kingston. I don't know anything about any papers being hidden away or burned or destroyed.

21st. To the twenty-first interrogatory deponent answers:

At the time we sailed for Guantanamo I knew that war was going on between the United States and Cuba. Guantanamo is in Cuba, and I knew that war was going on between Cuba and the United States. About three days before I left Kingston I heard that Guantanamo was blockaded; I heard it from people around the streets; I didn't see it; I heard it was in the papers; I never heard any of

the officers of the "Adula" or people on board talking about
182 Guantanamo being blockaded, and I don't know exactly whether the owner or master or officers of the ship "Adula" knew that Guantanamo was blockaded. I knew about it, but I don't know anything about them. I don't know how I found it out, but I heard it on the streets of Kingston.

22nd. To the twenty-second interrogatary deponent answers:

We didn't enter the port of Guantanamo; at that time we went up to the mouth of the harbor, and at that time when we got to Guantanamo we found the warships there blockading the harbor; I don't know anything about any order being given to blockade it. The crew of the "Adula" made out, about a mile and a half before we reached Guantanamo, a small cruiser, and the "Adula" stopped, and the cruiser ran up across the bow, and the captain of the cruiser asked us, "Didn't you sight the warships down to Santiago?" and the captain said, "Yes," and the captain stopped, and he said, "Didn't you hear that Guantanamo was blockaded?" and our captain said, "Yes;" then he said, "You can proceed on." I heard about the blockade in Kingston, but after leaving Kingston, until we met this cruiser, I never heard about it any more. I know nothing about any writings or indorsements on the ship's register.

23rd. To the twenty-third interrogatory deponent answers:

I know that the ship's papers were shown to the United States officers on the voyage to Santiago; I don't exactly know the time when that was; it was within a month of this last trip. We were stopped on the voyage to Cienfuegos and Santiago; I saw the United States officer come aboard the ship and stop us; I never saw the officer look at the papers, but I saw the captain coming to him with the papers in his hands; I don't know what was written on the papers, as I never examined them.

24th. To the twenty-fourth interrogatory deponent answers:

I don't know that the "Adula" has ever tried to run the blockade at Guantanamo; I don't know that, and I don't believe it.

25th. To the twenty-fifth interrogatory deponent answers:

I don't know that the "Adula" has ever been sold as a prize of war before.

183 26th. To the twenty-sixth interrogatory deponent answers:

I have sustained no loss through the capture of the "Adula." When I get back to Kingston I will be paid for all my time; the custom officer and the purser will pay me. Nobody has agreed to pay me for any losses that I sustained in case the ship was captured.

27th. To the twenty seventh interrogatory deponent answers:

I know nothing about the ship being insured.

28th. To the twenty-eighth interrogatory deponent answers:

No cargo on board.

29th. To the twenty-ninth interrogatory deponent answers:

No cargo on board.

30th. To the thirtieth interrogatory deponent answers:

No cargo on board.

31st. To the thirty-first interrogatory deponent answers:

No cargo on board and no papers pertaining thereto.

32nd. To the thirty-second interrogatory deponent answers:
I never saw any papers being taken away from the ship.
33rd. To the thirty-third interrogatory deponent answers:
No cargo on board.
34th. To the thirty-fourth interrogatory deponent answers:
Mr. Solis was on board when the ship was captured. I don't know whether he was a passenger or not; they say he is the charterer; he is the only one that could have been a passenger. Mr. Solis was not hidden away when the ship was captured. I don't know what nationality Mr. Solis is; he speaks the Spanish language. I don't know what his profession is and I don't know about what his business is. Mr. Solis came on board at Kingston, Jamaica. I don't know when he came on board the ship, but he was there before we left. I don't know what Mr. Solis' final destination was. I know nothing about his business. I don't know what interest Mr. Solis had in the "Adula." I don't know what authority he had over the boat; he didn't give me any orders, and I didn't hear him give any orders to anybody. Nobody was secreted away on board the ship. There were no citizens of the United States on board the ship coming from Kingston. I don't know where Mr. Solis lives, but we took him on board from Kingston.
184 Mr. Solis speaks Spanish, but I don't know what country he belongs to. Mr. Solis did not-ing on board the ship.
35th. To the thirty-fifth interrogatory deponent answers:
I know nothing about any papers on board the ship.
36th. To the thirty-sixth interrogatory deponent answers:
At the time the "Adula" was captured, we were going to Guantanamo. When we cited the "Marblehead" she was lying outside, and we were out there, spinning right around and round, waiting for something—I don't know what—and the "Marblehead" was in sight. The "Adula" was right abreast the harbor's mouth of Guantanamo and was steaming right around. From the time the "Adula" left Kingston, I don't know anything about whether she went right in a straight line across. We went down the coast of Cuba before we got to Guantanamo. We saw some war vessels down to Santiago. We were about 4 or 5 miles off Santiago harbor, and then we headed straight on up the coast, and we saw a cruiser before we reached Guantanamo. I don't know whether the "Adula" was ever wide of her course or not from the time we left Kingston until we got to Guantanamo. When we sighted the warships at Santiago we were coming up past there, and we saw them about 4 or five miles away, and we passed right on by them. Before we saw them we didn't have up any flag, but when we saw the warships we hoisted the flag, and went right along up there. I don't know whether the course of the ship was altered at Santiago or not. The "Adula" was coming right straight down the coast.
37th. To the thirty-seventh interrogatory deponent answers:
I don't know that the "Adula" has ever been sold. If the boat was returned back to the owners, I believe that Captain Forwood would be the owner.

38th. To the thirty-eighth interrogatory deponent answers:

There were no guns on board the boat when she was captured; no arms, ammunition, gun-cotton, or any war material of any kind that I saw; no pistols either.

185 39th. To the thirty-ninth interrogatory deponent answers:

When the boat was captured, I believe it belonged to Captain Forwood. I believe it was bound to Guantanamo when it left Kingston, Jamaica, on this last voyage.

40th. To the fortieth interrogatory deponent answers:

The "Adula" has never been convoyed, to my knowledge.

I received no instructions to do anything in case the "Adula" was captured by any warships.

41st. To the forty-first interrogatory deponent answers:

I went twice to Santiago, once to Guantanamo, and once to Cienfuegos. The first time the "Adula" came to Cuba I wasn't on board the boat, but I think she then went to Cienfuegos. The second time we went to Santiago the ports wasn't blockaded, but all the other times that we went to Cuba the ports that we went to were blockaded, and lots of men-of-war out there. At the time the "Adula" was captured she was sailing for the blockaded port of Guantanamo; she was not at that time going to Santiago. I heard about these ports of Santiago, Cienfuegos and Guantanamo being blockaded a long time before we went there. Each trip we made to the ports in Cuba, I heard about their being blockaded before we left Kingston. I never was warned not to go to these blockaded ports, but when we left Santiago we met a cruiser, and the captain asked our captain if he didn't hear that Santiago was blockaded. I heard our captain say "Yes," and he said, "We are going to blockade Santiago now," "and I am very sorry to stop you; you can proceed on your journey." This happened on the second trip I made to Santiago. I never was warned about any of these other places being blockaded, and I could not tell whether any one else was warned about it.

42nd. To the forty-second interrogatory deponent answers:

I know nothing about any letters of marque or reprisal or other letters that the ship carried.

43rd. To the forty-third interrogatory deponent answers:

I never have seen the "Adula" sailing along in company with any armed vessel for the purpose of making captures or seizures.

186 44th. To the forty-fourth interrogatory deponent answers:

I have no relatives in the Spanish service.

HORATIO MORRIS.

Subscribed and sworn to before us this July 22, 1898.

A. E. K. BENHAM,
Rear Admiral U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

Endorsement: United States *vs.* Steamship Adula. Interrogatories of Horatio Morris. From sealed package from prize commissioners. Opened by the court, and now, July 27, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

187 *Deposition of James Clarkson.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division.

In re THE "ADULA." Prize Cause.

The deposition of James Clarkson, a witness produced, sworn, and examined *in preparatorio* on the 21st day of July, in the year 1898, at the United States court-room, Savannah, Georgia, on the standing interrogatories established in the district court of the United States for the southern district of Georgia, the said witness having been produced for the purpose of such examination by the United States attorney in behalf of the United States and the captors of a certain ship or vessel called the "Adula."

1st. To the first interrogatory deponent answers:

I was born at Preston, Lancashire, England; I now live in Kingston, Jamaica; I have lived there since November, 1896. I think I had been there about twenty months before I left. I owe allegiance to England; I am a subject and citizen of England. I am not a citizen of the United States of America. I am not a married man.

2nd. To the second interrogatory deponent answers:

I was present at the time the "Adula" entered the port of Guantanamo and at her capture. I was present at no lading.

3rd. To the third interrogatory deponent answers:

The seizure was made in the harbor of Guantanamo, and she was in that port when she was captured. I am not going to confine myself to the date. My record is the log book; I must refer you to that for all dates. The capture was made on the 29th of June, as near as I can remember, 1898. I have no notice of whatever letters she carried. I cannot say upon what pretext the seizure was made.

4th. To the fourth interrogatory deponent answers:

She sailed under English colors and had no other colors on board.

5th. To the fifth interrogatory deponent answers:

She made no resistance at the time of the capture. There were no guns fired by any one. The capture was made by the "Marblehead." There were numerous ships in sight at the time of the capture—all the ships in the port of Guantanamo.

188 I could not pretend to name them. She was a merchant ship and had no commission as a privateer. I have no knowledge of whatever letters she carried. As far as I know, she had no letters of marque or reprisal. The "Adula" belonged to the Atlas Company. The capturing vessel was a ship of war; of what force I cannot say.

6th. To the sixth interrogatory deponent answers:

I do not know what authority the capturing vessel had to capture vessels. The capture was made by the "Marblehead." The "Adula" was seized, but not condemned.

7th. To the seventh interrogatory deponent answers:

The name of the vessel taken was the "Adula;" the name of the master, R. W. Yeats. Captain Forwood, of the Atlas Steamship Company, agent in Kingston, Jamaica, appointed him master in Jamaica. I have known the "Adula" since I joined her, in 1896. I have known Captain Yeates since I joined the "Adula," not as captain, but as chief officer. I know him now as master. He took command at Kingston, Jamaica. Captain Forwood must have delivered the vessel to him, since our captain was away sick. The fixed abode of the master and his family I cannot tell you, nor his last place of residence, nor how long he lived there. I don't know where he was born, nor of what country or State he is a subject or citizen.

8th. To the eighth interrogatory deponent answers:

The "Adula" is 372 registered tonnage. 35 persons belonged to the ship's company at the time she was captured, and there were actually on board of her at that time 35. They were of various countries—Englishmen, Barbadians, Nassauns, Jamaicans. I know that some of the ship's company are naturalized citizens of America; by birth they are Scotch. I should answer that question, I believe, that some are Scotch. To the best of my knowledge, all the people did join the ship at Kingston, Jamaica, at various times. I joined in November, 1896; others joined at various times. One or two came on board particularly for this trip, to fill vacancies as extra waiters. They were hired or shipped by the purser, who selected the men. The deck hands for this voyage I selected. The stewards, waiters, etc., the steward selected, and the engineers, the chief of engineers, and they were all selected at Kingston at various times.

189 9th. To the ninth interrogatory deponent answers:

I belonged to the company of the ship captured at the time of her seizure and in the capacity of acting chief officer. I had no interest in the vessel except my own personal effects. As far as my knowledge goes, I or none of the officers or mariners or company belonging to the vessel at the time of her capture had no part, share, or interest in her or in the goods or merchandise laden on her, because there were no goods laden on the vessel for any one to have any interest in.

10th. To the tenth interrogatory deponent answers:

I have known the "Adula" since November, 1896. I first saw her at Kingston, Jamaica, at that time. She carried no guns. There was no engagement between the man-of-war and the "Adula." The "Adula" was seized in a peac-able manner and a guard placed on board, and the ship's company consisted of 35 persons, including the officers. There were 35 persons on board at the time of her capture, consisting of men, boys, and one lady. The ship was built at Belfast, Ireland. He- name was the "Adula" at the time of building,

at what precise date I cannot remember. She has not had any other name of my knowledge.

11th. To the eleventh interrogatory deponent answers:

The "Adula" was bound from Kingston, Jamaica, to Guantanamo; thence to Santiago; thence to Manzanillo. Her voyage began at Kingston, Jamaica, and was to have ended at Kingston, Jamaica. At the time of her first setting out on the voyage she had no goods laden on the ship of any sort or description, and she had no goods on board whatever at the time she was seized. I know of no goods that she carried on her previous voyage. On her previous voyage I was away from the ship.

12th. To the twelfth interrogatory deponent answers:

I have no knowledge of whatever letters she carried at the time of her seizure, the captain having possession of all such papers if there were any. On her last voyage I was not with her, being away on sick leave. The previous voyage she carried her usual general cargo to various points around the island of Jamaica. She made sundry voyages to Cuba in ballast. The "Adula" sailed on the 28th of June from Kingston, Jamaica, and previous to that she sailed from the port of Kingston.

190 The "Adula" has made, to my knowledge, five trips to Cuba; from what month to what month I cannot remember. She went to Cienfuegos for two trips. One voyage she went without me, to the best of my knowledge, and she also made a voyage to Santiago, and this, her last voyage, to Guantanamo. The regular business of the steamer is coasting service around the island of Cuba.

13th. To the thirteenth interrogatory deponent answers:

At the time of her first setting sail for her last voyage the "Adula" had no merchandise of any description on board, and had none when she was taken.

14th. To the fourteenth interrogatory deponent answers:

The owners of the vessel and goods at the time of her capture and seizure—I have already answered that she had no goods on her at the time of her capture. The owners of the vessel were the Atlas Steamship Company. I know they were the owners at that time because they were my employers; to the best of my knowledge, they were the owners. I have no knowledge of where the owners live or where they were born. I have no knowledge of what country or State they are subjects or citizens.

15th. To the fifteenth interrogatory deponent answers:

I have no knowledge of any bill of sale being given, but as far as I know, she was built for the owners. I have no knowledge of any purpose to give any bill of sale.

16th. To the sixteenth interrogatory deponent answers:

There was no lading on board the ship at the time of her capture.

17th. To the seventeenth interrogatory deponent answers:

There were no bills of lading on board the ship.

18th. To the eighteenth interrogatory deponent answers:

I have not in my possession and have no knowledge of any papers, letters, bills of lading, or invoices to show that I have any interest

whatever in the ship, and I have no knowledge respecting the interest of any other person in the ship, if any.

19th. To the nineteenth interrogatory deponent answers:

The "Adula" was captured in the harbor of Guantanamo, Cuba, but in what latitude or longitude I do not remember. I
191 have already stated that I have no knowledge whatever of any agreement or papers or letters or instructions on board the ship at the time of her capture. I do not know what arrangements she was under, and have seen no papers.

20th. To the twentieth interrogatory deponent answers:

I don't know of any papers, bills of lading, letters, or other writings relating to the vessel or her cargo that were on board the vessel at the time she took her departure from her last clearing port before she was taken as a prize, and none of these were, to my knowledge, burned, torn, thrown overboard, destroyed, or cancelled or attempted to be concealed.

21st. To the twenty-first interrogatory deponent answers:

I had no knowledge that the port of Guantanamo, to which we were bound in the first instance, was under blockade, and, as far as I know, neither the master or the person having command of the "Adula" or her navigation at the time and place of her capture were entirely ignorant of the state of blockade of the port of Guantanamo. I knew there was a state of war between the United States and Spain, but I did not know there was a state of blockade at the port of Guantanamo.

22nd. To the twenty-second interrogatory deponent answers:

My knowledge was the American fleet had been there or might possibly be there, and we should have to pass through the American fleet in the harbor of Guantanamo, and from it we should have to obtain permission to take refugees from there. I had no knowledge and never knew of any order being given for the blockade of the port of Guantanamo before we entered the port of Guantanamo. When an American man-of-war, as I must call it, met us two miles outside we stopped when she spoke us, asking us where we were bound to and such particulars; we replied we were bound to the port of Guantanamo, and we were told to proceed into the harbor; and, further, we stopped again off the entrance of the harbor, and the commander of the "Marblehead" sent one of his officers with a pilot to bring us into the port.

192 At that time there was no seizure made until we had dropped anchor, and two hours after she had entered the port, and the first and only notice, and we had no notice then given of the blockade.

The commander of the steamer when he met us did not tell us that the port was in a state of blockade. I believe he told us something about the port was in the possession of the Americans; but he told us to proceed, and, to the best of my knowledge, that is all he said. I know of no endorsement on any ship's papers with respect to any blockade or any order of blockade.

23rd. To the twenty-third interrogatory deponent answers:

There were no papers shown to or examined by the naval officers

or those in authority until after the ship was at anchor in the port of Guantanamo. At the time we came to anchor, a lieutenant from the "Marblehead" came on board and mustered all hands, and posted his men in various places about the ship, asking for all the ship's papers.

Having obtained them, I believe he examined them and kept possession of them, and I believe that he went on board the "Marblehead," from which vessel a message was sent to Captain Yeates to go on board the "Marblehead." Commander McCalla came on board during the evening and mustered all hands again; had men posted in various parts of the ship, keeping all hands together, and a lieutenant obtaining lights, searched the ship throughout, taking charge of all papers which could be found in the possession of the supercargo and the captain and purser which had at all any bearing on the ship's business. The supercargo was placed under special surveillance, and a guard of marines also on board keeping surveillance over the whole crew. I think that is about all that happened that day. I just wish to say, at the end of that, this statement is correct to the best of my recollection only.

24th. To the twenty-fourth interrogatory deponent answers:

The vessel made no attempt whatever to enter a port secretly or to leave the same secretly.

193 25th. To the twenty-fifth interrogatory deponent answers:

The vessel has never been seized as a prize to my knowledge.

26th. To the twenty-sixth interrogatory deponent answers:

I have sustained some loss, certainly. I compute such loss that I have—expenses in Jamaica, which I pay for, as it were, by contract; and not being in Jamaica to take advantage of what I pay for, I am at a loss. I have received no promise of any indemnity for any loss and have received no indemnity.

27th. To the twenty-seventh interrogatory deponent answers:

The said vessel's insurance I have no knowledge of.

28th. To the twenty-eighth interrogatory deponent answers:

There was no cargo on board.

29th. To the twenty-ninth interrogatory deponent answers:

There was no cargo on board.

30th. To the thirtieth interrogatory deponent answers:

There was no cargo on board.

31st. To the thirty-first interrogatory deponent answers:

I know of no papers of any description relative to the ship which may be in any other country, or on board any other ship, or in any other place whatever.

32nd. To the thirty-second interrogatory deponent answers:

I know of no papers being carried from the vessel at the time we were captured.

33rd. To the thirty-third interrogatory deponent answers:

There was no cargo on board.

34th. To the thirty-fourth interrogatory deponent answers:

There were no passengers on board of said vessel. No passengers or other persons whatever were secreted on board the boat, and there

were no officers, soldiers, or marines secreted on board. There were no citizens of the United States on board or secreted at the time of the capture. Whether there were any particular members of the crew citizens of America, I cannot say. I believe that the supercargo is a citizen of Cuba; that is as far as my knowledge goes; that is the only member of the crew who, to my knowledge, belongs to any country at war with America. The supercargo's name was J. R. Solis.

194 His employment on the vessel, so far as I know, is to assist the purser in his duties and to inspect the ship's business and its cargo; he is really an assistant purser. In case of writing to be done and calculations being made he assists the treasurer. If there was a cargo aboard he would keep account of the loading and discharging of the cargo. There was nothing practically for him or the purser to do on the trip; in fact there was nothing; their business begins when we get into port. His destination was the same as the rest; he was sailing from the port of Kingston and returning to Kingston and be discharged.

35th. To the thirty-fifth interrogatory deponent answers:

I have no knowledge of the papers or whatever papers there were. I know nothing of their contents. All my writings concerning the vessel are in the log book of the ship. I have written to no one about the ship.

36th. To the thirty-sixth interrogatory deponent answers:

Her course was not altered. She was at anchor when she was seized. Her course at all times was direct to the port of Guantanamo; but this I may say: from some cause, whether from currents, winds, or bad steering, she got—in the morning of the 29th, I think it was—much further to the westward than we expected to find her. The only reason we can give for that is that she was taken there by the currents, wind, or bad steering. The vessel was not sailing wide of her course, to our knowledge, at any time during the voyage. We left Morant point, steering a direct course to Guantanamo. We steered that course until, I think, about noon on the 29th—that is, the next day. We then found from the appearance of the land, which we recognized, having been there before, that we must be somewhere to the eastward of Santiago. Seeing that we were out of our course, the captain suggested, and I seconded it, that we should alter the course and make for this land we recognized, get our bearings, and steer a direct course along the coast. When we got within a few miles of the land, recognized the land, and found exactly where we were we observed what we presumed were American men-of-war off the entrance to Santiago. We headed the ship for the men-of-war, expecting the men-of-war to bear down upon us and question us.

195 As no men-of-war made any attempt to come down to us, we put the ship about and steered to the eastward, direct for Guantanamo, and no man-of-war attempted to follow us, and we presumed at once they had nothing to say to us and were allowing us to proceed, because we were quite close enough for them to see us as we were to see them. The exact distance I don't know, cer-

tainly not less than 5 or 6 miles. When we found we were out of our course I think we altered our course about a point to the northward. I don't know her exact course at that time; it is all in the log book, and I must refer you to that. The log book shows the exact course of that trip for every point. She was wide of her course ten or fifteen miles.

37th. To the thirty-seventh interrogatory deponent answers:

I have no knowledge of the vessel being sold or transferred at any time to any one. I thoroughly believe if the vessel was restored she would belong to the Atlas Steamship Company, undoubtedly.

38th. To the thirty-eighth interrogatory deponent answers:

The vessel carried no guns or ammunition; there was no military equipment whatever on board the ship, nor were there any military tools on board, and none were thrown overboard.

39th. To the thirty-ninth interrogatory deponent answers:

According to the best of my knowledge and belief, the vessel was chartered by one J. R. Solis to proceed in ballast to the port of Guantanamo, arriving at that port to obtain permission of whatever authorities were there, and to take away refugees; after taking on board her refugees, to proceed to Santiago and, if possible, to obtain permission from the blockading squadron to proceed to Santiago and take refugees from there; if this was successful, she was then to proceed to Manzanillo, take on board refugees at that place, and return to the port of Kingston. This is the sum total of my knowledge of her voyage.

40th. To the fortieth interrogatory deponent answers:

The vessel sailed under convoy of no ships of war or no armed vessel. I know of no directions or instruction for resisting or endeavoring to avoid or escape from capture or refusing to deliver the documents, letters, or other papers.

196 41st. To the forty-first interrogatory deponent answers:

With respect to this voyage, she sailed with no intention of entering any blockaded port without permission, to the best of my knowledge. With respect to any previous voyage to Cuba, such as Santiago or Cienfuegos, she had no orders to enter any port under blockade without permission, nor did she enter any port that was blockaded without full and free permission from the man-of-war blockading it, and made no attempt to do it, but sailed right into the fleet every time. All voyages of which I am aware to Cuba she had permission to enter the ports—that is to say, where there was any blockade. At Santiago there was no blockade at the time of our entry there; she simply went in to the port and came out again without any stoppage whatever. At Cienfuegos, on both occasions, she was stopped by a blockading squadron and received permission. On one trip to Cienfuegos I was not present. On these two voyages on which I went with her I was told and given to understand she had permission from Washington to make two voyages to Cuba for refugees. I don't know whether they had reference to Santiago or not. I think it had reference to Cienfuegos. In no case, to my knowledge, has she entered any port she did not have permission to enter. She got permission from Washington

once to make two voyages. I have been given to understand she got permission from the American consul at Kingston and other points. I was not officially informed about what she had been doing, nor had I official information of what permission she may have had at any time. I heard from hearsay on both occasions upon which I accompanied the vessel to Cienfuegos the port was blockaded. I first learned that previous to the voyage from Kingston. I was never warned not to proceed to or to attempt to enter into or to escape from such blockaded ports.

42nd. To the forty-second interrogatory deponent answers:

The vessel has never had any letters of marque or papers of such description, to my knowledge.

197 43rd. To the forty-third interrogatory deponent answers:

The "Adula" has never acted in concert with any other vessel in pursuing or attempting to seize or capture any property of the United States.

44th. To the forty-fourth interrogatory deponent answers:

I have no relative or connection whatever with any one in the Spanish military or naval service.

J. CLARKSON.

Subscribed and sworn to before us this July 22, 1898.

A. E. K. BENHAM,
Rear Admiral U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

Endorsement: United States *vs.* Steamship "Adula." Prize. Interrogatories of James Clarkson. From sealed package from prize commissioners. Opened by the court and now, July 27, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

198 *Deposition of David Hamilton.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division.

In re the "ADULA." Prize Cause.

Deposition of David Hamilton, a witness produced, sworn, and examined *in preparatorio* on the 20th day of July, in the year 1898, at the United States court-rooms, Savannah, Georgia, on the standing interrogatories established by the district court of the United States for the southern district of Georgia, the said witness having been produced for the purpose of such examination by the United States attorney in behalf of the United States and the captors of a certain ship or vessel called the "Adula."

1st. To the first interrogatory deponent answers:

I was born in Jamaica—at Port Maria Bay, Jamaica. I live at Kingston, Jamaica. I have lived there, from my reckoning, over

twenty-two years. I am a citizen of Jamaica. I am a Briting subject. I am a married man. I am not an American citizen. My wife and family reside in Kingston, Jamaica.

2nd. To the second interrogatory deponent answers:

I was present at the capture and taking of this vessel, the "Adula." I was on board of her until she arrived here in Savannah.

3rd. To the third interrogatory deponent answers:

This capture was made at Guantanamo. We were outside of the channel, laying to for a pilot. We were about a mile and a half at the time from the harbor. When we were captured we were taken into the harbor of Guantanamo and we were anchored, and a steam-launch was sent alongside of us from the "Marblehead" and took the captain.

I understand it was the "Marblehead" that captured us. I don't know for what reason or pretext this seizure was made.

4th. To the fourth interrogatory deponent answers:

The "Adula" was flying the English colors. Those are our regular colors. The only colors we have on board besides that was the union jack for a pilot and the signal flag.

199 We don't use these except to signalize, and the merchant ensign. The merchant's ensign is a different ensign from what the English men-of-war use. That tells of what government she is. She had the jack up for a pilot when she was boarded. I believe it is the rule to fly that ensign when we go into a foreign port.

5th. To the fifth interrogatory deponent answers:

Nobody on the boat made any resistance when she was captured. We hove to off the port about a half an hour, expecting a pilot, and after a while we seen a little boat coming out of the harbor, and after a while we see two persons in the boat, and the captain steamed up gradually to meet it, and after we got towards them they stopped and the captain and a Spaniard came aboard and took us in. I don't know whether it was a Spaniard or a Cuban; they speak the same lingo. They said the ship called the "Marblehead" captured us. There were other warships lying in the mouth of the harbor. The "Adula" is an English vessel. She is a merchant ship. I believe the "Marblehead" that captured us is a ship-of-war.

6th. To the sixth interrogatory deponent answers:

I don't know whether the "Marblehead" had any right to capture us or not.

7th. To the seventh interrogatory deponent answers:

The vessel taken was called the "Adula." The name of her commander was Captain Yeates. I believe the agent in Jamaica, Captain Forwood, appointed him to this command. I knew the vessel eight years ago. I have known this said captain only six months as mate on board, since I been there. The right captain is sick that was there before. This captain took possession of her at Kingston, Jamaica, in June. I really can't remember the date. They took her one trip around the coast of Jamaica, and this is the second trip as captain. He has been mate before. I don't know how long he has been mate of that ship. As far as I understand, this captain

has been living in Jamaica. His wife and family are there. I don't know how long he has lived there. I don't know where the captain was born. I don't know what nationality the captain is.

200 8th. To the eighth interrogatory deponent answers:

I don't know exactly what the tonnage of the "Adula" is. I think she is about three hundred and odd tons. I don't know how many there were in the ship's company. I think there are thirty and odd. There is only one passenger on the boat. I heard his name, but I don't remember it now. Since you have called the name I will say that the passenger's name is Mr. Solis. The crew are from Jamaica and Nassau. The passenger is either a Cuban or a Spaniard. He speaks the lingo. All the crew and all the parties came on board at Kingston, Jamaica. The captain, Mr. Yeates, shipped and hired the crew. Some of us went on the vessel now; some been for years on the vessel. I only been there six months. Captain Yeates shipped them at Kingston, Jamaica.

9th. To the ninth interrogatory deponent answers:

I belong to the company of the vessel that was captured. My position is quartermaster. None of us on board the vessel has any share or interest in the vessel except our wages. I don't know that anybody on board had any interest in the "Adula." I didn't know anything about Mr. Solis until she was seized, and then I heard that he was the charter master.

10th. To the tenth interrogatory deponent answers:

I have known the "Adula" eight years. I first saw her at Kingston, Jamaica. She don't carry any guns. All the men were on her at the time she was captured that were on her at the time she left Kingston, Ja. She was built at Belfast, Ireland. Her name is the "Adula," and I have known her eight years by that name. I have never known her to be called by any other name. I have never heard of her being called by any other name.

11th. To the eleventh interrogatory deponent answers:

After we left Kingston we understood that we were going to Cuba, but we didn't know what point we were going to, and then when we came off this place I understood we were going to Guantanamo; that we were bound there. We left Jamaica on a Tuesday evening, and on a Wednesday afternoon came up to this Guantanamo. We sighted the fleet to the leeward at Santiago, off the port bow, about five or six miles away. We didn't stop our signal there when

201 we saw the warships. We had the flags up, but we didn't stop and signal to anybody. I don't know whether that would have been our regular course from Kingston to Guantanamo; that was for the captain to say. We was coming up along the coast and we saw this little cruiser very near to the channel of Guantanamo, and I saw this little cruiser coming out and edging down the coast. She came along the channel, outside of the coast, and we was outside of her, and when she saw us she lay right across our bow, and as the captain saw her coming out he stopped, and they hailed us and asked where we was bound from, and the captain said we was from Kingston, Jamaica, and then they asked, "Where are

you bound to?" and the captain said we was bound to Guantanamo, and they asked us whether we saw the fleet to the leeward, and the captain said, Yes, and they said, "All right; you can proceed on," and we went right on in and lay to there. We came up by Santiago, saw the ships, and we stopped right out here in the centre of the mouth of the channel, and then we saw the warships. It is a big harbor, and you can see right inside. When we got there the captain hove to and signalled for a pilot. We stayed out there for a little while, not acquainted enough with the channel to go in, and waiting for a pilot, and a good while after we saw this little boat come out—it was a little rowboat—and we took the glass and made out there was two men in the boat, and so we steamed ahead gradually to meet the boat and then stopped, and they came alongside and made fast the boat, and the officer and a Cuban was in the boat, and they both came on the bridge and took the vessel in. The Cuban was the pilot and took the vessel in. They took us inside that bay. We started from Kingston. I didn't know where we were bound for. I simply understood we were going to Cuba, but I didn't know the right port we were bound for. We didn't have any load on board; she was empty; we only had water and coal on board. The coal was put on Tuesday, the day we left; we left on a Tuesday evening. The last voyage we made before this was around the island of Jamaica; it was a general cargo that we carried at that time. We went around the island from port to port. I made about four trips to Cuba before that; we went to Cienfuegos and Santiago. We went to Cienfuegos about three times.

202 We were stopped by warships the first time, about three, I think it was. I think it was the "Marblehead" and two others. That was when we were going in, and they let us go on in. The second trip I didn't count the ships; it was a lot of them. I forgot how many now. The third time we went in I didn't see any ships, either going or coming. The last trip we made to Cienfuegos was about two weeks before we were captured. I think we went to Santiago in the month of May. I don't know what time of the month it was, but I can remember it was in May. I didn't see any men-of-war at the time we were there, either coming in or going out. At the time we were captured this was the fifth trip that we were making to Cuba. Since I have been on there—on the "Adula"—we made three trips to Cienfuegos, one to Santiago, and one to Guantanamo. When we went to Cienfuegos we didn't carry any cargo; we went for passengers, and we only brought passengers away. We didn't carry any cargo at all, in boxes, bags, or barrels.

12th. To the twelfth interrogatory deponent answers:

I don't know whether the "Adula" had any passport or sea brief on board to go into those ports. Just before she was taken she went around the coast of Jamaica, from Kingston to Alligator Pan, Black river, Savlamar, and Lucene. We carried a general cargo there, fish stuff, dry goods, and wet goods. When she ended that trip she came back to Kingston.

13th. To the thirteenth interrogatory deponent answers:

She had no cargo on board at the time she was captured.

14th. To the fourteenth interrogatory deponent answers:

I understand the Atlas Company are the owners of the "Adula." As far as I know, the Atlas Company owned this boat at the time she was captured. I know this only from what I have seen and heard. As far as I know, the Atlas Company are the owners. I don't know about anybody else owning any interest in her. I understand some of the owners are living in Liverpool, some in New York, and some in Jamaica. Captain Forwood stays in Jamaica. I don't know whether Captain Forwood has any interest in her. The ship flies the English flag, and I suppose the owners are English.

203 15th. To the fifteenth interrogatory deponent answers:

I know nothing about any bill of sale being given for the "Adula."

16th. To the sixteenth interrogatory deponent answers:

While we were lying in the harbor of Jamaica we were taking in a cargo for the coast of Jamaica, and it was taken out again. I know this cargo was for the coast of Jamaica, because I seen the marks. It was taken in on Monday. That cargo wasn't left in her because they got a charter for Cuba, and it was taken out on Tuesday morning. The Jamaicans are British subjects.

17th. To the seventeenth interrogatory deponent answers:

There was no cargo on board of the "Adula" when she was captured.

18th. To the eighteenth interrogatory deponent answers:

There were no papers that I know of or bills of lading put on board the "Adula."

19th. To the nineteenth interrogatory deponent answers:

I don't know what latitude or longitude the "Adula" was captured in, but it was captured off the mouth of Guantanamo harbor. She was captured on the Wednesday evening after leaving Kingston, Jamaica. We left Kingston, Jamaica, on a Tuesday evening, and they all came on board at that time. Guantanamo is on the island of Cuba. I don't know anything about a charter-party being made for that voyage. I only supposed it was chartered. I heard afterwards, though, when we got there, that it was this man, Mr. Solis, that chartered her. I don't know when it was that she was chartered, but I suppose it was when they were taking in this cargo. I suppose it must have been Monday.

20th. To the twentieth interrogatory deponent answers:

I don't know of any papers on board of the "Adula" being thrown overboard, burnt, or destroyed. I don't know of any papers being concealed on board of the "Adula" after she was captured.

21st. To the twenty-first interrogatory deponent answers:

I knew at the time of the capture of the "Adula" that Cuba was at war with the United States. I knew that, but I did not know that Guantanamo was blockaded, and I don't know whether the officers knew. I don't know that they had any notice that the ports of Cuba were blockaded. I had no notice. The only notice I got was because it was rumored over the world that Cuba and the United States were at war.

204 22nd. To the twenty-second interrogatory deponent answers:

At the time we went up there there were no ships out there to prevent us from coming in. One of the officers came out and took us in. We were not stopped from going to Guantanamo. We were not prevented from going up in the harbor, and we went up there. We didn't get up to the city of Guantanamo. There were American warships at the mouth of the port when I got there. I didn't know anything about a blockade being there. They came and took us in there and never stopped us.

23rd. To the twenty-third interrogatory deponent answers:

There was no search of the vessel before we were seized. They just came out and took us in there. They didn't get the papers or the books at the time we went in. The two first trips we made to Cienfuegos officers came aboard each time, and I saw them and the captain in the saloon overhauling papers. I don't know what they were about; I saw some papers, I believe. No United States officer came on board of the vessel, except those two times when we were off Cienfuegos. The last time we came out of Cienfuegos, Sunday evening, when out to sea, we sighted a cruiser about half a mile away. After that an officer came on board; he spoke to the captain. I don't know what he said, but after a while the captain sung out to our captain that he could proceed on; that he was sorry he stopped us.

24th. To the twenty-fourth interrogatory deponent answers:

I don't know that the "Adula" attempted to go into any port without permission from the American warships. Just as I told you before, when we came up there a little cruiser came out and asked where we came from, and we said from Kingston, Jamaica, and he said, "Where are you bound?" We said, "To Guantanamo." He said, "Did you see the fleet down there?" and the captain said, Yes; and he said, "All right; you can go on in."

25th. To the twenty-fifth interrogatory deponent answers:

The "Adula" has never been seized as a prize before, to my knowledge.

26th. To the twenty-sixth interrogatory deponent answers:

I have not lost anything by reason of this vessel being seized.

205 27th. To the twenty-seventh interrogatory deponent answers:

I don't know anything about the vessel being insured; I don't know whether she is insured or not.

28th. To the twenty-eighth interrogatory deponent answers:

There was no cargo on board.

29th. To the twenty-ninth interrogatory deponent answers:

There was no cargo on board.

30th. To the thirtieth interrogatory deponent answers:

There was no cargo on board.

31st. To the thirty-first interrogatory deponent answers:

There was no cargo on board and no papers pertaining thereto.

32nd. To the thirty-second interrogatory deponent answers:

There were no payers, to my knowledge, taken off the boat before we were captured.

33rd. To the thirty-third interrogatory deponent answers:

There was no cargo on board.

34th. To the thirty-fourth interrogatory deponent answers:

There was no passengers on board except this one party named Mr. Solis. There was nobody hidden away or secreted in the boat that I know of. Mr. Solis speaks Spanish. I don't know whether he is a Spaniard or a Cuban. I don't know what his business or occupation is. I didn't know what he was there for until we went to Guantanamo, and then I heard he was the charterer and had charge of the "Adula." I understand he was going there for passengers. I understand he chartered her from the Atlas Company at Kingston. We were all taken on board at Kingston, and he came aboard the very evening about five minutes before we left. I did not know to what port he was going, only to some port in Cuba, and I did not know what he was going for. I don't know whether he had any money with him or not. I don't know that he had any control of the vessel, only I heard so after the men-of-war made an investigation. There were no soldiers secreted on board of the "Adula" when we went in. I don't know that there was anybody on board the "Adula" that was a citizen of a country that was at war with the United States, except Mr. Solis.

206 Mr. Solis did nothing on board the vessel. I don't know what he was put down on the articles as.

35th. To the thirty-fifth interrogatory deponent answers:

I don't know of any of the parties on board having any passports.

36th. To the thirty-sixth interrogatory deponent answers:

At the time she was captured she was steering for Guantanamo, Cuba; she hove to there. She didn't alter her course at all when the men came up; she was waiting there for a pilot. We went right straight from Jamaica to Guantanamo. We went by Santiago before we came to Guantanamo. When we left Jamaica we went right across, and when we hit the land we hauled to Guantanamo. As far as I know, the "Adula" went right straight for Guantanamo. I don't know what the course is.

37th. To the thirty-seventh interrogatory deponent answers:

I don't know anything about the boat being sold to anybody.

38th. To the thirty-eighth interrogatory deponent answers:

There were no guns or cannon on board the "Adula." There was no ammunition or implements of war on her at all.

39th. To the thirty-ninth interrogatory deponent answers:

My belief is that the "Adula" started there to Guantanamo to bring passengers; that is what she went there for before, from Cuba to Jamaica.

40th. To the fortieth interrogatory deponent answers:

To my knowledge the "Adula" never has been convoyed by another ship. I don't know anything about any orders to refuse to give up the Adula to anybody or to try to evade capture.

41st. To the forty-first interrogatory deponent answers:

We did not attempt to go into any other port that was blockaded. We knew that Cienfuegos was a Cuban port and we were stopped twice going in there before. We didn't know what we were stopped for; they never told us anything. The first trip we went there we understood it was blockaded, but understood that the captain had permission to go in there. We didn't get that information until we got down to the fleet.

207 42nd. To the forty-second interrogatory deponent answers:

I don't know that the ship had any authority to act as a privateer.

43rd. To the forty-third interrogatory deponent answers:

I don't know of the "Adula" being in company of any other vessel as a privateer.

44th. To the forty-fourth interrogatory deponent answers:

I have no relatives in the Spanish army or any of them in the Spanish service.

DAVID HAMILTON.

Subscribed and sworn to before us this July 21, 1898.

A. E. K. BENHAM,
Rear Admiral U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

Endorsement: United States *vs.* Steamship "Adula." Interrogatories of David Hamilton. From sealed package from prize commissioners. Opened by the court and now, this July 27, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

208 *Deposition of John Darling.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division.

In re the ADULA. Prize Cause.

Deposition of John Darling, a witness produced, sworn, and examined *in preparatorio* on the 20th day of July, 1898, at the United States court-rooms, Savannah, Georgia, on the standing interrogatories established by the district court of the United States for the southern district of Georgia, the said witness having been produced for the purposes of such examination by the United States attorney in behalf of the United States and the captors of a certain ship or vessel called the "Adula."

1st. To the first interrogatory the deponent answers:

I was born in Kingston, Jamaica, have lived there all my life, and I am thirty-five years old. I am a British subject. I am from Kingston, Jamaica. I am not a citizen of the United States. I am a married man and reside in Kingston, Jamaica.

2nd. To the second interrogatory the deponent answers:
I was employed on board the ship "Adula." I was on board when the ship was captured.
3rd. To the third interrogatory the deponent answers:
The "Adula" was captured off Guantanamo harbor's mouth. I don't remember exactly the time. She was carried direct into Guantanamo. The Adula never captured any other vessels. I don't know anything about letters to make prizes. I don't know for what reason the seizure was made.
4th. To the fourth interrogatory the deponent answers:
The vessel sailed under the British flag. The vessel had the house flag and the jack. The jack was for calling pilots, and the house flag was the sign of the house.
5th. To the fifth interrogatory the deponent answers:
There was no resistance. The officers were received aboard the ship. There was no guns fired. I don't remember any. I think, according to the officer, the capture was made by the "Marblehead." The officer came off the "Marblehead." There was
209 no other ship in sight, to my knowledge. I don't know that she did any privateer business. All I know, she only took in coals and water at Kingston, Jamaica. I suppose the ship belonged to the Atlas Company, Captain Forwood. The usual business of the boat was to go around the coast of Cuba, getting passengers. When she came to Guantanamo she came for passengers; she only had coals on there. The ship had no guns on her at all.
6th. To the sixth interrogatory deponent answers:
I think the vessel was captured by the "Marblehead." Probably some government did give the "Marblehead" authority to make the capture. I don't know about the condemnation of the vessel.
7th. To the seventh interrogatory deponent answers:
The vessel's name was the "Adula." He commander was Captain Yeates. Captain Forwood appointed Captain Yeates to command the vessel at Kingston. Captain Walker was sick and First Officer Yeates taken charge because Captain Walker was sick. I have known the "Adula" for seven years or more. I have known Captain Yeates three years. He took possession of the vessel at Kingston, Jamaica. Captain Forwood delivered the vessel to him. Captain Yeates' family lives at Kingston, Jamaica; he has lived there ever since he has been aboard the ship. He was living at Kingston, Jamaica, before he came on board the ship, I think. I don't know where Captain Yeates was born. I don't know of what country or State he is a citizen. He speaks like an Englishman; he doesn't speak any foreign language; where he comes from I do't know.
8th. To the eighth interrogatory the deponent answers:
I don't know what the tonnage of the vessel is. The crew was on board at the time she was captured. I think it is thirty-two, as far as I can remember. I think the quantity of men is thirty-two. They were all mustered out and taken when the "Adula" was captured. Some are Jamaicans, some from Nassau, and myself from

Kingston. The rest of the crew was from Jamaica. I think some of them belong to Nassau.

210 All of them came on board at Kingston. I think the ship left Kingston on the 28th of June. We were all hired by the Atlas Company and shipped by the purser; Captain Forwood hired me. Captain Forwood didn't hire me exactly, because I didn't go to him. Captain Walker hired me, because he gave me the job himself. Who hired the rest of the men on the boat I don't know; probably the first mate hired them; maybe the chief mate, or the second mate.

9th. To the ninth interrogatory the deponent answers:

I belong to the ship's company; I am quartermaster of the "Adula." All the interest I had in the vessel was my work that I am paid to do. As to any of the other officers or mariners I don't know; they keep that to themselves.

10th. To the tenth interrogatory the deponent answers:

I have known the vessel "Adula" for seven years; I first saw her in Kingston, Jamaica; she carried no guns whatever. When she first saw the gunboat they had the same quantity of men on board as I told you before—thirty-two. All the ship's company were there, thirty-two, and one man came in in there. This gentleman, Mr. Solis, he came from Kingston, Jamaica. There was one passenger besides the ship's crew; that was the man that they called Mr. Solis. The "Adula" was built in Liverpool; she hails from Liverpool; she is marked "Adula," Liverpool. Ever since I seen her, her name was called the "Adula." I have never heard any other name that she was called by than the "Adula."

11th. To the eleventh interrogatory the deponent answers:

At the time the "Adula" was taken and seized she was bound for Guantanamo from Kingston, Jamaica. She was intending to go to Guantanamo from Kingston, Jamaica. All she took from Kingston, Jamaica, was coal; nothing else that I know of. The only load she had on board when taken and seized was coals; nothing else that I seen. This lading was put on board the 28th of June. All she had on this voyage was coals; nothing else but coals.

211 12th. To the twelfth interrogatory the deponent answers:

I don't know whether she had a sea brief or not. Before she was taken she made a voyage around the island of Jamaica, carrying cargo and bringing passengers. Before she left for Guantanamo she went around the island of Jamaica, getting cargo and bringing passengers. On the last voyage before she was taken she went from Port Antonio to Kingston, and from Port Antonio came on to Moran's bay, Jamaica. Before we made the last trip around the island we went to Cienfuegos. I don't know when that voyage was made. Before the ship was taken she made the voyage around the island; it was about two weeks before she was captured that she went to Cienfuegos. When she went to Cienfuegos she carried barrels; what they were I couldn't tell. She carried no passengers from Cienfuegos back to Jamaica, and from Jamaica to Cienfuegos. I think we did carry some passengers; I couldn't tell. Those we took from Cienfuegos to Jamaica. That was about two

weeks before she was captured. Before we went to Cienfuegos we used to carry cargoes around the islands, except those barrels to Cienfuegos; outside of that we never carried anything, except to Kingston, Jamaica. The cargo that we carried to Cienfuegos was only those barrels. I don't know how much they weighed or whether they were heavy or not. They were hoisted by our steam on to the lighter. I don't know what there was in them. That was the last trip to Cienfuegos. About two weeks before she was captured she made about 4 or 5 trips in the month of June to different ports in Cuba. We went to Santiago de Cuba, went to Cienfuegos, and came to Guantanamo. Those are the only three ports I went into. The last port she sailed from before the ship was captured was from Kingston, Jamaica. She sailed directly from there to Guantanamo and was captured.

13th. To the thirteenth interrogatory the deponent answers:

The only load she had on board was coals; that was all I saw. They were put on board on June 28th of this year. I don't know how much coal she had on board; I only looked out from my other work. She loaded up with coals at Kingston, Jamaica, on the twenty-eighth. We generally gets in on Mondays, and on Mondays I am not there. I am always down there on Tuesdays for sailing days around the ports of Jamaica.

212 Whatever is put in on the Mondays I don't know until we get around the coast of Jamaica and see it taken off. There was nothing taken off to my knowledge. When I came down those coals were going in; nothing was taken off to my knowledge. I don't know whether the coal was carried to be sold or not, or whether it was for our own use or not; I don't know how much coal the ship carries for her own use. We had coal there before. I suppose it was put there for ballast; it was put down in the same bunkers as usual. The coal was put where they always put it.

14th. To the fourteenth interrogatory the deponent answers:

I understood that this Mr. Solis had chartered the "Adula." I don't know whether he bought her or not. I understood that he had chartered her. I found out that he had chartered her by hearing it on the decks. I never seen the man until the next morning going to breakfast. I don't know who he chartered her from—from the owners, I guess. I suppose the Atlas Company owns the ship—Captain Forwood. I know Captain Forwood is the agent from the Atlas Company. I don't know the nationality of the owners of the ship or the charterer.

15th. To the fifteenth interrogatory the deponent answers:

I don't know whether a bill of sale was made for the ship or not. I don't know anything about a bill of sale.

16th. To the sixteenth interrogatory the deponent answers:

The load that was found on board the "Adula" was put on board on the 28th of June. I don't know who the consignees of the "Adula" are.

17th. To the seventeenth interrogatory the deponent answers:

I know nothing about any bills of lading.

18th. To the eighteenth interrogatory the deponent answers:

I know nothing of any matters referred to in interrogatory 18.

19th. To the nineteenth interrogatory the deponent answers:

The "Adula" was captured off Guantanamo harbor's mouth.

I don't know anything about the latitude or longitude. I know nothing about the charter-party of it.

213 20th. To the twentieth interrogatory the deponent answers:

I don't know anything about any papers on board the ship. There were no papers destroyed to my knowledge. There was no papers thrown overboard when the vessel came up to Guantanamo.

21st. To the twenty-first interrogatory the deponent answers:

I did not know that the place that we were going to, Guantanamo harbor, was at war with the United States and was blockaded. I don't know whether the captain or Mr. Solis knew that Guantanamo harbor was blockaded or not. I didn't know at the time of the capture that the harbor was blockaded; we were not notified at all; whether anybody else knew I don't know. Some time after we left Cienfuegos we met a warship and a boat came alongside to us; what they said to the captain I don't know. I don't know what the captain said to our captain. That was after we left Cienfuegos; we were on our way to Kingston and the ship was laid to. I was on the deck. The ship was laid to—waiting. That was out at sea—no port at all—between Cienfuegos and Jamaica; we were nearly back to Kingston. I don't know what distance it was, but it was a long way from Cienfuegos.

22nd. To the twenty-second interrogatory deponent answers:

I did not know whether the port of Guantanamo was under blockade at the time the "Adula" attempted to enter there; no warning was given to me; if any warning was given it was given to the officers; none was given us.

23rd. To the twenty-third interrogatory deponent answers:

I know nothing about any endorsement on the register or any writing thereon.

24th. To the twenty-fourth interrogatory deponent answers:

We made three trips to Cienfuegos during the month of June, in my memory. On the first voyage, in my memory, we saw a man-of-war, one or more, I don't remember; on the second trip we saw two; on the last one we didn't see one going in; I don't know whether we saw any coming out. Going in we didn't see any, but coming out I don't remember whether we saw any or not.

214 On the first two trips, when we saw the warships, we only hoisted the ensign to let them know who we were. I don't remember whether they came alongside of us on those two times or not. We made on- trip in June to Santiago; I don't remember what date it was, but I know we went in there one voyage: it was about a month before we were captured. I don't remember exactly what date it was; I know I went in there. I saw United States warships then; we never hailed them, but we generally hoisted the ensign and house flag to let them know who we were. I don't remember whether they came alongside. This was the first trip we made in the month of June to Guantanamo. I never have been to

Manzanillo. The only places I went to was Santiago, Cienfuegos, and Guantanamo.

25th. To the twenty-fifth interrogatory deponent answers:

I don't know that this ship, the "Adula," has ever been taken as a prize.

26th. To the twenty-sixth interrogatory deponent answers:

I haven't lost anything yet by the seizure of this ship; nobody has agreed to pay for my loss of time; the only thing I expect is to get back to Kingston, Jamaica, and get paid off for my time. Mr. Solis never spoke to me about paying me for my time.

27th. To the twenty-seventh interrogatory deponent answers:

I don't know whether the ship is insured or not.

28th. To the twenty-eighth interrogatory deponent answers:

I don't know.

29th. To the twenty-ninth interrogatory deponent answers:

No cargo except some coal.

30th. To the thirtieth interrogatory deponent answers:

That coal was put on board by a lot of women carrying it in baskets on their heads and throwing it down in the hold of the vessel at Kingston.

31st. To the thirty-first interrogatory deponent answers:

I don't know.

215 32nd. To the thirty-second interrogatory deponent answers:

I don't know anything about any papers.

33rd. To the thirty-third interrogatory deponent answers:

I don't know.

34th. To the thirty-fourth interrogatory deponent answers:

The only passenger was this man, Mr. Solis. He came on board before the ship left Kingston. There was nobody hidden or secreted on board. Before the ship left Kingston the vessel was searched by the officers to see that nobody was stowed away; the vessel was searched by the chief officer and second officer of the ship to see that nobody was aboard that was not supposed to come. I don't known what nationality Mr. Solis was. I never saw Mr. Solis on board this ship before. I don't know what Mr. Solis' occupation is. Mr. Solis was taken on board at Kingston. I did not know where he was going or what his business was; I don't know whether Mr. Solis had any authority over the ship. The only thing I understood was he chartered the ship to go for passengers. No citizens of the United States were on board when she was captured. I don't know whether there was any persons on board the ship at the time she was captured that were citizens of a country at war with the United States.

35th. To the thirty-fifth interrogatory deponent answers:

I don't know anything about the charter-parties and other papers. I have written or signed no papers concerning the vessel or her crew.

36th. To the thirty-sixth interrogatory deponent answers:

After leaving Kingston, the first Cuban port we sighted was Santiago. We saw a lot of men-of-war ships there. We didn't go very

near up, but we hoisted the ensign up so they could see, and no ship came there. We stayed there about fifteen minutes. At that time we were a good ways from there; I don't know how many miles. We could see the ships plainly with the naked eye. I could see the hulls were above the water. I could see lots of people on the ships with my naked eyes, without the glass. Then we hauled out again and went on again until we came to Guantanamo. I don't know whether it was the captain's intention to go into Santiago, but we changed our course after we got there.

216 Before we made to enter Guantanamo harbor we turned around and around several times waiting for a pilot. At Santiago the ships were all out there, and then we came right on up to Guantanamo and stayed there, waiting for a pilot. We were all the time in sight of land, close up to the coast. We were right in the centre of the mouth of the harbor, outside, when we sighted the war vessel.

In coming from Santiago to Guantanamo we went around the mouth of Guantanamo harbor, waiting for a pilot, and a gentleman came off from one of the ships. We turned around and around, way out to sea, waiting for some one that knows the place, to carry us in, and then we saw ships way inside there, but who they were we could not tell, and then this gentleman came. In turning round and round we might have gone from one side of the mouth of the harbor to the other.

37th. To the thirty-seventh interrogatory deponent answers:

I don't know anything about any sale or transfers. I could not say whether the ship was sold to Mr. Solis or not. I believe it belongs to Mr. Forwood.

38th. To the thirty-eighth interrogatory the deponent answers:

There were no guns on board the vessel. I don't know whether there was any implements of war on board of the "Adula;" I never saw any. I know nothing further in regard to the 38th interrogatory.

To the 39th interrogatory deponent answers:

I believe the ship belongs to the Atlas Company. The destination of this ship when it left Kingston was direct for Guantanamo. She signalled the men of war at Santiago because they might want to get some papers from her, or something.

40th. To the fortieth interrogatory deponent answers:

The "Adula" has never been convoyed. I had no instructions in regard to destroying or concealing documents in case of capture. I know nothing further in regard to the fortieth interrogatory.

41st. To the forty-first interrogatory deponent answers:

Since the war with the United States the "Adula" went three times to Cienfuegos, once to Santiago, and once to Guantanamo, to three points. I don't know whether those points were block-

217 aded or not. I never was warned not to enter Cienfuegos. I don't know whether the vessel was warned; the officers never told me anything about any warning.

42nd. To the forty-second interrogatory deponent answers:

I don't know.

43rd. To the forty-third interrogatory deponent answers:
I have never assisted any other boats in cruising or privateering against the United States.
44th. To the forty-fourth interrogatory deponent answers:
I have no relatives in the Spanish service.

JOHN DARLING.

Subscribed and sworn to before us this July 21, 1898.

A. E. K. BENHAM,
Rear Admiral, U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

Endorsement: United States *vs.* Steamship "Adula." Prize. Interrogatories of John Darling. From sealed package from prize commissioners, opened by the court and now, July 27, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

218 In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

THE UNITED STATES
vs.
STEAMSHIP "ADULA," HER TACKLE, APPAREL, FURNITURE, AND CARGO.

Testimony *de bene esse* of witnesses produced before prize commissioners, A. E. K. Benham, Julian Schley, and Edgar Denmark, at the United States court-rooms, Savannah, Georgia, July 25, 1898, at 10 o'clock a. m., in the above-stated case, on behalf of the libellant, in pursuance of the notice and agreement hereto attached.

Present: E. A. K. Benham, Julian Schley, and Edgar Denmark, prize commissioners; Marion Erwin, United States attorney, William R. Leaken, assistant United States attorney, for libellant; P. W. Meldrim, proctor for the Atlas Steamship Company, Limited.

219 EDWIN A. ANDERSON, a witness for the captors, duly sworn, testified as follows:

Direct examination.

Questions by United States attorney, MARION ERWIN:

Q. What position do you hold, if any, in the Navy of the United States now?
A. I am lieutenant, senior grade.
Q. What position did you hold on June 29, 1898?
A. The same.
Q. What was the ship?

A. United States ship "Marblehead," third rate.

Q. Where was that ship June 29, 1898?

A. Anchor-d in Guantanamo bay, Cuba.

Q. How long had you been on duty on the "Marblehead" prior to June 29, 1898, roughly speaking?

A. About a year; I could say over a year; is that near enough?

Admiral BENHAM: That will be near enough.

Q. On the afternoon of June 29, 1898, what was the position in Guantanamo bay of the "Marblehead" as indicated on the plat, Exhibit A to the testimony of Ellenburg & Gill?

A. She was west by south, in seven fathoms of water, off Fisherman's point.

Q. Describe it.

A. The position as indicated by the figure M in red ink.

Q. Is that chart the official chart of the harbor?

A. It is, sir.

Q. Did you see the "Adula" that afternoon?

A. I did; she was anchored.

Q. Wait a minute; when you first had your attention called to the "Adula," or the ship which you afterwards found out to be the "Adula," where were you?

A. I was on the poop of the "Marblehead."

Q. Where was the "Adula" at that time?

A. She was off the entrance to the harbor, on the south of Windward point, which is on the eastward entrance to the harbor.

220 Q. Indicate on the chart with a pencil about the position that the "Adula" was in when you first had your attention called to her.

A. I should think that is (indicating) about the position.

Q. It is the position indicated by that letter A prime, in black ink?

A. I only saw her for an instant at that time, because I went up on the poop for some other purpose; I was not officer of the deck at that time; then I went down below. She had anchored before I relieved the deck as officer of the deck; before I came on poop as officer of the deck.

Q. She had anchored at that time?

A. I saw her off the entrance.

Q. When you next had your attention called to her where was she?

A. She was in the starboard quarter of the "Marblehead," in a position——

Q. To the east or west of the "Marblehead"?

A. Well, it was about southeastward of the "Marblehead;" the "Marblehead" was headed about northeast at that time, and she was almost south of the "Marblehead."

Q. Where was she, as indicated on the plat? Was she in the position indicated by A 2?

A. That is about it.

Q. She was very near the "Marblehead"?

A. Very near the "Marblehead," sir.

Q. Did you proceed to do anything in or about the "Adula" when she came to anchor?

A. I did not.

Q. When was it you had any connection thereafter with the "Adula"?

A. The commanding officer of the "Marblehead" called me into the cabin about 5.15, I should judge——

Q. Who was the commanding officer?

A. Commander B. H. McCalla—and ordered me to take an armed crew of marines in the steam-launch and proceed to the "Adula" and take charge of her; I did so.

221 Q. Did you make any search on the "Adula" for anything? If so, what?

A. I mustered the crew on starboard side of the "Adula," posted marines both forward and aft to see that no man left the ranks, and examined them as regards the movements of the "Adula," as far as possible, and also examined them to determine their nationality. I went down in the holds of the ship and examined them carefully to find out if she had any cargo or any articles aboard contraband of war.

Q. Did you find any papers?

A. The commander came over about an hour later, and by his direction all papers relating to the ship, with the exception, as I recollect it, of the register, were seized by him and taken to the "Marblehead." On his departure I was left in charge of the ship, and I was ordered to place a guard over the person of J. R. Solis, with orders not to permit him to leave the sight of the guard day or night. I proceeded to do that.

Q. You can go on now and state whether any additional search was made after that afternoon.

A. On January first—I mean July first—Commander McCalla came on board, and by his direction the crew or a part of the men, I should say, from the "Marblehead" made a strict search of the ship under my directions; marines were posted at different parts of the ship so as to prevent any communication from one part to the other, and her cabins, store-room, ventilators, masts, and every part of the ship were carefully searched to see if any persons not on the passenger list was concealed there and to see if any cargo was secreted in any part of the ship. The papers, private and otherwise, of the supercargo, J. R. Solis, were taken from him, under my supervision, and turned in to the commanding officer, a list of which I took at the time.

222 Q. Why do you speak of him as the "supercargo"?

A. Because his name appears on the log of the ship as supercargo, and also in some other papers which I found.

Q. You don't know what position he really held upon the ship otherwise than appears from the papers?

A. I do not; also at that time papers were taken from the cabin of Captain Walker, who was the commander of the vessel.

Q. He was commander of the vessel then?

A. Not at that time the commander of the vessel; he had been

taken with a paralytic stroke just before the vessel left Kingston, so I was informed by the commander of the "Adula" and others.

Q. Who was commander of the "Adula"?

A. He was Chief Officer Yeates.

Q. You can go on with your narrative.

A. Those papers, a list of which was taken by me, were also turned over to the commanding officer, Captain McCalla, or Commnd. McCalla, rather. I remained on board the "Adula" day and night, with the exception of one day, which was July 3; the evening of that day I was on the Marblehead, and proceeded to Santiago, and did not return until the evening of the following day. A cadet was placed on board the vessel, in charge. On July 10th I was ordered by Commander McCalla to take the papers and vessel and proceed to Savannah, Georgia, and deliver them to the prize commissioners at that port. I received written instructions from Admiral Sampson to that effect. I took them, and arrived off——

Q. What did you bring her as?

A. As prize master.

Q. You brought her as what?

A. I brought her as a prize.

Q. As a prize of war?

A. Prize of war. I arrived off the harber of Savannah at daylight on the 15th inst. I was detained at quarantine until
223 the afternoon of the 16th, and the ship was detained there for the purpose of fumigation, and I arrived at Savannah late in the afternoon of the 16th inst. I reported to the commissioner, and delivered all papers at that time in my possession, which were sealed, with the exception of the log; I had no opportunity to seal that; that was tied up (the log), however. There is an entry in the log to the effect that the last entries——

Mr. MELDRIM: The entries will show for themselves. Who had the entries made there? Go ahead and tell that.

A. The entry was made by the commanding officer of the "Adula" that all further entries on the log were prohibited after the 10th of July.

Q. That entry was made under your direction?

A. Yes, sir.

Q. Delivered the papers to whom?

A. Delivered them to Prize Commissioner Julian Schley on the afternoon of the 16th inst.

Q. You spoke a while ago of having seized all papers on the ship, all with the exception of some register. You never did seize the register?

A. I seized the register subsequently to that, after having consulted with the prize commissioners. I also made a second search of the vessel after arrival at Savannah, and seized all papers on the person or in the state-room of Captain Yeates, of Purser Williamson, and some papers, private papers, which were in the stateroom of Captain Walker, which had not been seized at the time of the capture at Guantanamo.

Q. You turned over all those papers to the prize commissioners

A. I turned over those papers to the prize commissioners.

Q. Referring to this chart of Guantanamo harbor, the Marblehead was located at about the spot which you indicate here with
224 the red letter M on the chart. Can you state, if a vessel was coming from the westward, around that westward point indicated on the plat as leeward point, coming from the west in that direction, at what position would that vessel first go in, when it was first to be seen by a person on the Marblehead, the vessel itself, independent of any smoke?

A. It would be seen in the direction of southwest ½ south magnetic.

Q. Take your pencil and draw a line from the position of the Marblehead, about or across the point indicated, to the line of vision there.

(Here witness draws a pencil-mark.)

Q. You have drawn the pencil-mark?

A. Yes, sir.

Q. Somewhere in that lead-pencil line?

A. Yes, sir.

Q. What did you have to prevent a person on the Marblehead from seeing a vessel coming from the westward before it reached the line of that pencil-mark?

A. Because the bluffs there are too high to be seen over.

Q. Are they wooded bluffs?

A. Yes, sir; they are wooded bluffs and they are quite high.

Q. Now, with reference to any person upon a vessel moving from the westward towards the mouth of Guantanamo bay, when could that person on that vessel first see the war vessels in the harbor—war vessels of the United States?

A. When the east tangent of the leeward point appeared about N. E. ½ north.

Q. Indicated now on the chart?

A. Until this point opened out to the eastward.

Q. A person on the Adula, having come from that direction, could not see the warships until she about reached that lead-pencil line, as indicated on the chart?

A. They could not.

Q. How was the Marblehead; what condition was the Marblehead in in reference to her ability to move at that time?

225 A. She had steam up day and night, with the chains ready for slipping, the buoy ready for letting go. She could have gotten under way in from 3 to 5 minutes any moment, day or night. The guns—do you wish me to say anything about the battery?

A. Yes.

A. The guns were all loaded and 4 shells for each 5-inch gun were on deck day and night, and a box of 6-pounder ammunition was by each six-pounder gun, with a shell in the guns day and night.

Q. How far was the effective range of the Marblehead?

A. 8,500 yards for five-inch guns.

Q. Well, roughly speaking in nautical miles, about how far?

A. About four miles and a quarter.

Q. If the Adula, when she was first sighted from the Marblehead or when she could first see of the Marblehead in the harbor, was somewhere about this position, indicated by the red letter A on the plat or in the lead-pencil line near it, was she in effective range of the Marblehead at that time?

A. She was within the extreme range of the Marblehead at that time.

Q. Do you know anything of the armament of the Vixen?

A. Only in a general way; yes.

Q. Well, in a general way, what do you understand to be her armament?

A. The Vixen has, I think, six six-pounders, some Colt automatic guns, some Maxim-Nordenfelt one-pounders; the exact number I don't know. That is my recollection of the battery. That is what I have seen of it.

Q. Do you know anything about the speed of the Vixen?

A. The speed of the Vixen, the extreme speed, is about 14 knots, to the best of my recollection.

226 Q. What is the speed of the Adula?

A. About 9½ knots, extreme. I did not make any more than 8½ out of her.

Q. If the Vixen was passing out of the harbor at the time that the Adula came up to the harbor, and was in a position to see the American warships in there, and the Vixen came out, state whether or not the Vixen was in a position to capture the Adula if the Adula had have turned round.

A. Undoubtedly.

Q. Was she in effective range?

A. She was within range of the Adula at the time she was sighted, I think; that is my impression from what was told me. The Vixen came out and sighted the Adula just as she was to this point. I think she sighted the Adula as she was coming out of the harbor; that is my recollection.

Q. At what time had the Marblehead taken up her position at Guantanamo bay first?

A. I think she came in there July the 6th. I am sure she was there on July 8th.

Q. 1898?

A. 1898.

Admiral BENHAM: July, did you say?

A. June.

Q. State what do you know as to the time of the establishment of any actual blockade in Guantanamo bay—Guantanamo harbor or bay.

A. The establishment of the blockade in Guantanamo harbor took place from the time the Marblehead came in and anchored in the harbor.

Q. About June 8, 1898?

A. About June 8, 1898; the blockade was exceedingly strict and efficient.

Q. By whom was it established?

A. It was established by order of Rear Admiral W. T. Sampson, commanding United States naval forces in the North Atlantic station. When he established that blockade the commander
227 who was in command of the Marblehead at the time kept a very strict blockade.

Q. Was there more than one ship there—American warships?

A. After the Marblehead came in there was at no time less than two, and frequently several warships in the harbor.

Q. American warships?

A. American warships in the harbor. The Marblehead moved out to the entrance of Guantanamo bay every evening, and there was a vessel stationed at the entrance to Guantanamo harbor between Hickacal point and Caya del Hospital. This vessel had orders to keep her search-light playing on the entrance during the night. Besides this, there were from 2 to 3 launches there during the night, stationed between Caya del Hospital and Caya del Medio. This effectually closed the entrance of Guantanamo harbor. The Marblehead herself used her search-light at intervals to sweep the entrance to the bay.

Q. State whether during the period of the establishment of the blockade on or about June 8 up to and including the appearance of the Adula on June 29 that blockade had been active and effectual during that period.

A. Entirely so.

Q. Continuous?

A. Continuously active and effectual. The Marblehead never left the port, and there was no time that the port was without some other warships besides the Marblehead in there.

Q. Did those American warships turn any foreign vessels back?

A. Yes, sir.

Q. Coming into Guantanamo harbor and giving them notice of it?

A. Coming into Guantanamo harbor and giving them notice of it and refusing them entrance into Guantanamo harbor. I boarded an English vessel, a steamer, whose name I don't recall now, and ordered her in. She came for the purpose of getting a cargo from Caymanera and Guantanamo.

228 Q. A cargo of what?

A. Any cargo she could get. We refused to give her permission, and afterwards, I think, she was chartered by one of the New York papers to be used as a press boat. She was turned back; she was not allowed to enter there.

Q. So far as you know, had that vessel received any notice prior to your notice of the blockade?

A. Not from what the captain told me; I am sure she had not.

Q. Other vessels were turned back from there?

A. I don't recollect any other vessels.

Q. Yourself?

A. No, sir.

Q. Did you meet the Adula at any time elsewhere since the beginning of the Spanish-American war; and, if so, when and where?

(Here witness takes a log book.)

—. I met the Adula off Cienfuegos, Cuba, May 9, 1898.

Q. Did you board her?

A. I boarded her, and delivered to the commander of the vessel a copy of the proclamation of the President of the United States declaring a blockade of the ports on the north coast of Cuba, including the ports on said coast between Cardenas, Bahia Honda, and the port of Cienfuegos, on the south coast of Cuba. That proclamation I delivered to him, and also entered on the log and entered on the register of the ship.

Q. The notice of the fact?

A. The notice of the fact.

Q. You are referring to the proclamation of the President on the 22nd, declaring Havana and Cienfuegos blockaded?

A. Yes, sir.

Q. Where was your ship at that time?

A. Blockading the harbor of Cienfuegos.

Q. Under what commander?

A. Commander B. H. McCalla.

Q. To what particular fleet was he attached at that time?

A. He was under orders of Rear Admiral Sampson.

229 Q. At that time was there an actual and effective blockade of Cienfuegos?

A. There was.

Q. What American warships were those at that time engaged in the blockade of Cienfuegos?

A. The Marblehead, the Nashville, and the Vixen.

Q. At what time did the ship get orders to leave Cienfuegos, or did she leave Cienfuegos—the Marblehead?

A. The Marblehead received no orders to leave Cienfuegos. She returned to Key West for coal, and then returned back to Cienfuegos.

Q. When she left there did she leave any other vessels there?

A. No, sir.

Q. None of the vessels were left there?

A. Noother vessels were left there.

Q. You returned to Cienfuegos?

A. Yes, sir.

Q. What time did she leave again?

A. Leave Cienfuegos?

Q. Yes; when you went to Guantanamo.

A. We went from Cienfuegos to Santiago about the 26th; I think about the 26th of May. That is my recollection. I am not positive in regard to the date being the 26th of May. We stayed at Key West for coal only about 48 hours.

Q. Were there any capture- of prizes at Cienfuegos?

A. Yes, sir; we captured the Spanish steamer The Argonauta off Cienfuegos while we were there the first time.

Q. Those ships which were patrolling the seas to make — making the blockade effective, were they near in always or at some distance, or both? State how they were.

A. Well, they were within about 4 or 5 miles of the entrance day and night.

Q. These prizes that were caught, were they caught near in or far out?

A. The Argonauta was caught about six miles to the westward of Cienfuegos.

230 Q. Did you have any ships out scouting round?

A. No; not then.

Q. When you boarded the Adula, what date was that?

A. May 9th, I think—May 9th.

Q. May 9th. Where was she bound for?

A. She was bound for the harbor of Cienfuegos with a permission—with a letter, I should say, from the consul at Kingston.

Q. What consul?

A. Mr. Dent.

Q. What nation?

Mr. MELDRIM: Confine him to facts within his personal knowledge.

A. I was the boarding officer. I saw this letter.

Q. You read the letter?

A. Yes, sir; the letter was delivered to me. I would not have permitted her to proceed otherwise. The letter was from the American consul, named Dent, stating that he had permission from the authorities in Washington allowing the Adula to proceed into Cienfuegos through the blockading fleet for bringing refugees—American citizens.

Q. Do you know what became of that letter?

A. It was delivered to the commanding officer of the Adula. I don't know what became of it afterwards.

Q. Do you find that letter among the papers now?

A. No, sir; that letter is not among them.

Q. You say that trip was for the purpose of doing what?

A. Bringing off American citizens from Cienfuegos. That is what it stated in the letter.

Q. After the capture of the Adula and her seizure as a prize of war, you were put on her as prize master?

A. Yes, sir.

Q. While you were bringing her to Savannah and while the vessel was in custody, with Capt. Yeates aboard and Mr. Solis

231 and Purser Williamson, I believe is his name, did you have any conversation with Mr. Solis in reference to any notice given to him at Kingston in regard to the contemplated voyage of the Adula to Guantanamo, Santiago, and Manzanillo—this trip on which he was captured?

A. Yes, sir.

Q. What was it?

Mr. MELDRIM: I want to note objection to anything that Mr. Solis may have said so far as affects this defendant.

A. Mr. Solis told me that he had made this trip for a speculation; borrowed the money from a friend, one thousand pounds, and chartered this vessel to take to the ports of Guantanamo, Santiago, and Manzanillo for the purpose of bringing off refugees. He said that the charter was for 100 pounds a day, and that he expected to get at least 200 refugees at 10 pounds apiece, which would clear him one thousand pounds in case the trip took ten days; that he would clear more money in case the trip was shorter. I said to him I thought that was a very peculiar commercial transaction that, after having been refused permission by the American consul to make this trip, as he admitted to me, the American consul had done.

Q. What was the admission that he made that the American consul had told him?

Mr. MELDRIM: I wish an objection noted because this is hearsay and what he—some one—told them; that nothing that has been stated by Mr. Solis can bind or affect the rights of the Atlas Steamship Company, Limited, or the master of the ship, it not ap-
232 pearing that the said Solis was authorized to represent the owners or the master, no ratification of anything that may have been said or done by the said Solis, and the alleged conversation not having been in the presence of the owners or any representative of the owners authorized by the company in behalf of said owners. Now, come right down to that point; what was it he said to you about the conversation between Solis and Dent?

A. Mr. Solis told me that as the Adula had previously made two trips into Cienfuegos through the blockade without permission of the consul at Kingston or without authority that he thought he might do the same, or words to that effect.

Q. What was it he said to you—that Mr. Dent told him—about going to Santiago, Guantanamo, and Manzanillo?

A. He told me that the American consul at Kingston had refused him permission to enter those ports. That is all he told me about that.

Q. At what time did he say the American consul had refused him that permission?

A. Just before sailing, I understood him to say.

Q. Do you know whether notice of the fact that the American warships were guarding the coast of Santiago and Guantanamo had been, prior to June 28th, conveyed to Kingston, Jamaica, and known to our consul there?

Objection is here made by Major Meldrim on the ground that the witness could not possibly have known whether it had been communicated to the consul there unless the witness himself communicated the fact. "I object to the witness stating anything he may know unless it comes within his personal knowledge."

233 A. My personal knowledge is reading the Kingston newspapers in which the movement of ships at Santiago and Guantanamo is recorded. That is the information I had, that they knew anything about it, except for the fact that Admiral Sampson did issue a bulletin.

Mr. Meldrim objects to the contents of any bulletin on the ground that the bulletin itself is the best evidence of the contents thereof, the same being in writing.

Q. Go ahead and tell about it; those objections are noted.

A. He had issued a bulletin ordering the commanding officer of the American fleet to keep a lookout for the Adula, as she was supposed to have left Santiago, having on board the private secretary to General Blanco, and that besides that she had left Kingston without permission of the American consul at that place in spite of his warning. That bulletin I saw.

Q. You speak of seeing a notice in the Kingston, Jamaica, papers prior to the seizure of the Adula of the movements of the American vessels, etc.

Mr. MELDRIM: I object to the contents of the newspapers—note the objection—on the ground that the newspaper itself is the best evidence of the contents thereof, even admitting that anything that appears in the newspapers is worthy of belief.

Q. Did those papers indicate the fact of the blockade existing at those ports, Guantanamo and Santiago?

A. Yes, sir; at Santiago, certainly, and Guantanamo; the fact that American war vessels were there and that military oper-
234 ations were being *being* conducted against the forces on shore.

Q. Did you know about the time that Admiral Cervera's fleet—the Spanish fleet—was what we call "bottled up" in Santiago harbor?

A. Yes, sir.

Q. About what time was that?

A. Certainly from June the 1st; previous to that, I think. I don't recall the exact date.

Q. You think it was officially known that Admiral Cervera was bottled up at that time?

A. It was officially known at that time, I think.

Q. I ask you whether or not, from the time that it was reported that Admiral Cervera's fleet had gone into Santiago, there was any surveillance of Santiago harbor kept up by the American warships.

A. I can't answer that question. I don't know when that was first reported.

Q. Was your ship at any time near the vessels undertaking to guard Santiago harbor?

A. The ship, the Marblehead, was with Commodore Schley's squadron. When Admiral Cerver-'s fleet was found within the harbor I was the officer on deck when the fleet was sighted. I was the officer of the deck on the Marblehead when the Cristobal Colon was sighted, and I signalled the fact to the fleet.

Q. You are sufficiently acquainted with the movements of the fleet there to know whether or not there was a blockade established of that harbor?

A. I knew there was a very strict blockade of the harbor.

Q. That is, Santiago?

A. Santiago.

Q. That was as early as June first?

A. June first is my recollection of it.

Q. I will ask you if that blockade was effective and effi-
235 cient from that time.

A. It was.

Q. Do you mean for either coming in or going out?

A. Either.

Q. Or both?

A. Or both.

Q. Do you know whether or not the fact that the American fleet was blockading Santiago harbor from the time it was ascertained that Admiral Cervera was in there continuously up to and including the 29th of June—whether that knowledge was not of common notoriety all the world over?

A. I cannot say, except from the newspapers.

Mr. MELDRIM: With the utmost respect for the witness' information, I object to his testifying what all the world over knows. It is a matter of impossibility for the witness to know what all the world know-.

A. I say, from newspapers which I saw—Kingston newspaper-which I saw on the Adula—that fact must have been known to those persons on board the ship, had they read those papers. I can't say the world over.

Q. I mean generally speaking?

A. I don't know.

Q. Was it known on the American fleet that Santiago was being blockaded?

A. I can't say what was known.

Q. Your branch of the fleet?

A. I knew positively, but what others knew I can't say.

Q. Did Captain Yeates make any statement to you in reference to any notice from the consul at Kingston, Jamaica—the American consul—prohibiting the ship from going to Santiago, Guantanamo, and Manzanillo?

A. Yes; he told me in a conversation with him that the American consul had refused permission for the vessel to enter those ports on the voyage she was making.

236 Q. How much coal did the Adula have on board at the time she was seized?

A. About 96 tons of coal; possibly a little more.

Q. About what voyage would that enable her to make?

A. At least 1,200 miles, ordinary steaming.

Q. About how much mileage would a trip from Kingston,

Jamaica, to Manzanillo, Guantanamo, and Santiago and back to Kingston, as this voyage purported to have been intended, make?

A. About 550 miles, in round numbers.

Q. Did any officer on the ship make any statement to you of the amount of coal the Adula had on at the time she left Kingston?

A. The chief engineer informed me she had 121 tons of coal, which, at the rate of burning 15 tons a day, would give her 8 days' steaming.

Q. What did he state was her average rate of use of coal?

A. Fifteen tons a day. As I know, she would make in ordinary weather a little over 200 miles a day; that gives her a steaming radius of about 1,600 and a little more miles.

Q. That is for a mileage for a voyage intended, as indicated from her papers, say, of 550 nautical miles?

A. Yes, sir.

Q. And she had on 1,600 miles of coal, or coal capable of steaming that distance. About how much greater quantity of coal did she have on than was necessary?

A. I give in favor of the ship.

Q. Would not that be as many times as 550 enteres into 1,600?

A. No, sir; because you would have to consider that she would be lying in those ports some days and burning two tons a day; taking into consideration that she would lie in the ports 5
237 days and she burned two tons a day while lying still. Allowing three days to make this trip would be 45 tons, and ten tons when lying in port would be 55 tons. Take that from 121 tons and she would have at least 66 tons of coal more than was necessary for the trip, or more than 4⅓ days' steaming over, or considerably more than twice as much coal as would be necessary for the trip, making a very generous allowance.

Q. Did you take any more coal on the Adula after her capture before bringing her to Savannah?

A. I did not.

Q. How much coal is there on her now?

—. There is about 17½ tons.

Q. She came all the way, then, from Guantanamo bay up here with the coal you found on her?

A. She did, sir.

Q. About what distance is it from Guantanamo to Savannah, the way you came?

A. A little over 900 miles.

Q. Have you examined the log book of the Adula that you found aboard of her as to the course she steered from Kingston to the time of her capture and the courses she took and the observations, etc., made and the statement of her voyage?

A. I did, sir.

Q. I will ask you whether or not the entries are correctly made from a nautical standpoint.

A. I don't think they are.

Q. Just state in what respect you found any irregularities.

A. In the first place, the speed which is put down in the col-

umn as eight knots does not agree with the run of the patent log from 7 p. m. to 11.15 p. m.

Q. What date?

A. June 28, 1898. The course that was set from 11.15 p. m. would take the vessel over the crest of danger in Formirgas bank,
238 which would be a very imprudent thing for any navigator to do, as there is very little water on this bank, and it would be endangering the ship. In the noon position, which was the latitude by dead reckoning.

Q. Noon position on what day?

A. June 29th. The latitude by the dead reckoning is shown to agree with the latitude by observation. Taking the latitude by the dead reckoning is 19.36 and by observation 19.36, showing that the observation agreed exactly to the mile. This is that column (indicating). Now, the latitude by the run, as shown by the dead reckoning in the column, does not agree with that by observation by at least 16 miles.

Q. What do you mean by the dead reckoning?

A. By the dead reckoning I mean the speed of the ship as shown by the log, the patent log. It is entered in the column marked "Knots." He has got here 8 knots as the speed of the ship. Multiply the number of miles run by the number of knots per hour would give you the run from this position, where he has stated he was at 11.15, and that would be south about 16 miles of the position shown by the observation, and he has got the same to agree to a mile.

Q. You mean he has entered the same on the book?

A. Yes, sir.

Q. Did you work out the dead reckoning?

A. Yes, sir; I did. Again, he has a note that at 2 p. m., 5 miles off, showing several war vessels to the westward, presumed to be off Santiago harbor, bearing about west-northwest, steering coastwise for the port. At 4 p. m. he states he was off the port of Guantanamo. The distance between Guantanamo and Santiago de Cuba is 40 miles. Allowing that a vessel was 5 miles to the east-
239 ward, a war vessel was 5 miles to the eastward of Santiago—at that time the blockading vessels were at least as close to Santiago as that—and allowing that he sighted the vessels 5 miles off, as he stated, and that he displayed his colors for the purpose of identification, and it could not be further off than that, that would be giving him 30 miles to have run, which, at the rate of 8 miles an hour, which he puts down in his log, is an impossibility. The position at noon by the dead reckoning, as worked out by myself and as put down in the log, differs about 6 miles.

Q. East or west?

A. The position as given by himself differs 6 miles to the westward from the one as given by my calculation, as worked out by myself.

Q. Take your pen now and mark on this plat, which is marked "West Indies, Jamaica, etc." (and will be attached and marked Exhibit B). This is an official chart of those waters, is it not?

A. Yes, sir; it is. That position taken back from his run gives the position at 11.15.

Q. Marked letter A at that point?

A. There is where running on his course; he changed about 7.30 a. m.

Q. 7.30 a. m. What date?

A. On the 29th. The position C is the position at noon.

Q. What date?

A. On the 29th. That is his, according to his noon observation. Now, I know that the commanding officer is capable of taking a very accurate noon observation, as I tested him several times on the trip.

Q. Captain Yeates?

A. Captain Yeates, and his first officer also. They agreed exactly, and agreed with my run. In fact they were so accurate I
240 allowed them to take the noon observation. I worked the forenoon and afternoon observation and they checked, so I know they are capable of taking observations.

Q. That position C indicates where he was, according to the noon observation of the 29th?

A. His position by the noon observation and my position by the dead reckoning.

Q. Dead reckoning where?

A. This is the position of the ship (indicating). Now, D is the position as taken from the log by observation and his dead reckoning. He does not get a forenoon observation. He has got it marked here "obscured."

Q. Now, by his entry in the log book as to the distance that he traveled over, not from his dead reckoning, but from what he understoood to be his speed as entered in his log book, where was he at noon on the 29th—what position on the plat?

A. The position marked F.

Q. M; that is at noon on the 29th June. The position of the ship is marked by what process?

A. By the run as taken from the patent log.

Q. You mean as entered in the log book?

A. As entered in the log book at 8 knots speed—his entries in the log book at 8 knots.

Q. That puts him at F?

A. That puts him at F.

Q. The noon observation, made on the 29th, was what was shown by the observation of some planets, the moon or the sun?

A. The sun—meridian latitude.

Q. In other words, the noon observation at sea was simply to get the latitude and calculate the position of the ship?

A. The latitude of the ship by the altitude of the sun.
241 That is very accurate—the most accurate way of getting latitude.

Q. That put him at the letter C?

A. Yes, sir.

Q. While the point that he reached, according to the latitude that he put on his log book and by his rate of speed, was at F?

A. Yes, sir.

Q. The rate he put there was by his patent log?

A. Yes, sir; that is the only way he has of getting the speed of that ship; that is the only method he has of getting it, by the patent log.

Q. What is location of D there?

A. That is located by the course steered. He may have been in that position D; he may have made an allowance for wind, which was from the northward and eastward; he may have made some such allowance, but he does not show here he has made any. In calculating it it is possible he may have an allowance for an easterly wind. It would set him somewhat to the westward. I have not done so.

Q. How is it you say the course steered would bring him out at C and afterwards you say the course steered would bring him out at D? There is a difference in the record I want you to explain.

A. For my reckoning I have simply taken the course as given in the log and have made no allowance for wind, which was on the starboard bow, and this may have set in to the westward, as the ship was very light.

Q. Now, then, your calculations would put him at C?

A. Yes, sir; if I made no allowance.

Q. That is the position where he said he was himself?

A. That is where he says he was himself. I wish to go on
242 and state something more. When we found that his position was at D to have made Guantanamo harbor he should have steered a course about N. E. by N. Instead of that he continued his course for one hour north by east ½ east and then hauled up to a course north by west, hauling to the westward instead of to the eastward.

Q. Then, when he changed his course to the west, as you last state, how far off the Cuban coast was he, according to the position as indicated on the plat?

A. About 8 miles.

Q. Would the shore be in plain sight to him at that distance?

A. Very plainly; he states on the log that the coast of Cuba was in sight at 9 a. m., and that was at 1 p. m., after he had made a run of four hours.

Q. How far would the vessel have sailed, at her ordinary rate of speed, as indicated by the log there (8 knots an hour), from 9 a. m. to 1 p. m.?

A. 32 miles.

Q. Would the shore be in sight all that distance?

A. Yes, sir; easily, if it is clear weather.

Q. If it was clear weather it would be in sight?

A. Yes, sir; although he speaks of it here being squally and rain, which seemed he sighted it at very long distance in weather of that kind.

Q. How much water does the Adula draw?

A. Thirteen and a half feet.

Q. Would it be very dangerous to set that course from positions A to B, as indicated by your pencil line, between the two points across that Fromigas bank?

A. I think so.

Q. What does the chart indicate about the character of navigation at Fromigas bank?

243 A. It shows that there is a danger there, and from the chart I should judge that a portion of the bank is awash.

Q. What do you mean by awash?

A. That it is left bare when the seas leave it.

Q. You mean at low tide it shows up?

A. At low tide; and if the sea comes down the chart shows there is a heavy swell with a strong breeze there.

Q. Would an ordinarily prudent navigator put his course or run his course on a bank like that?

A. I should think not.

Q. Since having taken a recess for dinner did you repair to the steamer Adula and find any of the newspapers that you spoke about as having been aboard the boat when you seized her at first?

A. I did, sir; and the newspapers are in evidence here.

Q. You have them now?

A. I have them now; these are the newspapers. (Witness produces newspapers.)

Q. I will ask you later to make a special affidavit, identifying these papers, to be sent up with the other papers turned in by the prize commissioners. These are your initials, E. A. A.?

A. Yes, sir.

Q. One is La Lucha, June 9, 1898, and the Daily Gleaner, June 14, 98; this is the Kingston paper, is it not (referring to the latter)?

A. Yes, sir.

Q. And this is the Gleaner?

A. Of June 25, 1898.

At this point cross-examination of witnesses is taken up by Major P. W. MELDRIM.

244 Cross-examination:

Q. This Mr. Gill who has testified here, his means and opportunities for knowing the speed of the "Adula" are fairly good; he was on her this trip?

A. Yes, sir.

Q. You placed a guard over Mr. Solis with orders that he should not be permitted to leave the sight of the guard for a moment, did you or not?

A. Yes, sir.

Q. What special reason was there that you should have placed a guard over this man with such instructions?

A. I was obeying orders given me by my commanding officer, Commander McCalla.

Q. You therefore had some information, whether reliable or unreliable, in regard to Mr. Solis before you took possession of the "Adula"?

A. Yes, sir.

Q. Without stating what that information was, from whence and from whom was it derived?

A. From Mr. Solis himself.

Q. You evidently misunderstood the question. The question was, Before taking possession of the "Adula," before taking the steamer, if you put a guard over a man, keeping him guarded day and night, you must have had some knowledge or information concerning that man before you thus guarded him?

A. Yes, sir.

Q. From whom was that information derived?

A. From Mr. Solis himself before I accused him by admitting that he was a Spaniard, and I was ordered to place a guard over him.

Q. Then the only reason that you know of for putting a guard over this man was because he was a Spaniard?

A. Yes, sir; that's all I know.

Q. When you searched him he was entirely unarmed?

A. Yes, sir.

245 Q. There were no arms on the ship—apparently a commercial and peaceful ship?

A. Yes, sir.

Q. When this "Adula" approached the bay of Guantanamo her smoke indicated for some distance that a vessel was approaching that port?

A. Yes, sir.

Q. So far as these bluffs to which you have referred to as being too high to show the body of a ship, you were as well satisfied when you saw smoke what was approaching you—you were as well satisfied that a ship was approaching you as seeing the ship itself?

A. Yes, sir.

Q. For all practical purposes?

A. Yes, sir.

Q. So when you saw this smoke approaching the bay you believed that a steam vessel was approaching?

A. Yes, sir.

Q. It is a matter of common knowledge that a blockading ship engaged in her duty is prepared at every moment for rapid and immediate action?

A. Yes, sir.

Q. In referring to a blockade, directing our attention for the moment to the port of Guantanamo, you have said that a blockade commenced when the "Marblehead" came into the bay. When did the "Marblehead" reach the bay?

A. About June 8th.

Q. About June the 8th?

A. Yes, sir.

Q. You date the blockade from the time that the vessel came into that bay?

A. I do.

Q. Do you date all blockades from the time that a blockading vessel goes into a harbor?

A. Not necessarily.

Q. Why, then, do you date the blockade of this port at the time that this particular vessel got into this bay?

A. Because at the time she got into the bay she was assisted by another vessel, and no vessel could have entered into that
246 harbor either day or night without exposing themselves to capture by the "Marblehead."

Q. The blockade to which you refer was a blockade established by Admiral Sampson?

A. Yes, sir.

Q. When was the port of Guantanamo officially blockaded by the President of the United States?

A. June 27th, 1898.

Q. Therefore there was an official proclamation for Guantanamo bay on June 27th?

A. Yes, sir.

Q. On June 27th where were you?

A. I was on board the "Marblehead."

Q. And where was she?

A. She was in the bay of Guantanamo.

Q. And when did you see the proclamation of the President of the United States?

A. I don't recall that. I think either on that day or on the 28th the commanding officer informed me that the news had been telegraphed to him; I am not certain.

Q. On the 27th or 28th the commanding officer informed you of the blockade of Guantanamo bay?

A. That is, I think so.

Q. Will you be positive of the date?

A. No, sir; the 28th I think it was.

Q. Are you certain it was not later than the 29th?

A. I am sure that it was not later than the 29th.

Q. Are you prepared to say that a dispatch was not received by Admiral Sampson on the 29th day of June?

A. I am not prepared to state positively—no; but it is my belief that it was received; I don't know if it was received by Admiral Sampson, because he was at Santiago de Cuba. What the date of his dispatch is I don't know, but my belief is that it was received by my commanding officer on June 28th.

247 Q. Have you any knowledge as to when it was received by your commanding officer?

A. No, sir.

Q. You didn't see the dispatch?

A. No, sir.

Q. And you didn't see the bulletin?

A. No, sir; but I saw the bulletin containing the proclamation later.

Q. When did you see the bulletin containing the proclamation later?

A. I saw it, I think, after the first of July.

Q. Where did you see the bulletin?

A. On board the "Marblehead."

Q. It was an official bulletin?

A. It was a bulletin from the flagship.

Q. It was a bulletin sent from the flagship on the "Marblehead" and seen by you after the first of July?

A. I wish to state that it does not necessarily follow that I immediately saw that bulletin when it was received on board the "Marblehead," because I was in command of the "Adula," or in charge of the "Adula," and only came to the "Marblehead" about every other day; sometimes three days passed without my leaving the "Adula," and then I only came to the "Marblehead" with leave for a few hours to change my clothes.

Q. On July 27th and 28th Admiral Sampson was at Santiago, was he not?

A. Yes, sir.

Q. What means of communicating with the "Marblehead" did he have?

A. By torpedo-boats, dispatch-boats, and men-of-war and press-boats.

Q. Was he in cable communication with Washington on June 27th and 28th?

A. He was, through Guantanamo bay.

Q. How did he reach Guantanamo bay?

A. By vessel.

Q. If Admiral Sampson had received a dispatch informing
248 him of the blockade of Guantanamo, if it had been transmitted by cable from Washington, it would have reached Guantanamo bay, and thence it would have been transferred by vessel to Admiral Sampson's — off the port of Santiago?

A. Yes, sir.

Q. To communicate with Admiral Sampson, to establish communication, he would have been obliged to communicate also by vessels?

A. Do you mean communication for Santiago?

A. No; back to Guantanamo.

A. Yes, sir.

Q. When Admiral Sampson received the official proclamation of the blockade of Guantanamo bay you do not personally know?

A. No, sir.

Q. You remarked in your direct examination that ships had been turned back—from what port or ports?

A. Guantanamo.

Q. What ships were turned back?

A. A British ship—the name I have forgotten—boarded by meoff the entrance of Guantanamo bay seme time early in June, and I

ordered her to come in and anchor. She did so, and she stated that she was in there for the purpose of taking a cargo out from Guantanamo; this request was received by the commanding officer of the "Marblehead," and she was told that the port was blockaded and she couldn't come in.

Q. Now, after you had established this *de facto* blockade by the "Marblehead" coming into the bay of Guantanamo, at least one vessel did come in, one ship for cargo?

A. Yes, sir.

Q. Did any other?

A. I do not recall them.

Q. And she was not arrested, but turned back?

A. She was turned back; yes, sir. Not permitted to take cargo. The commander of that vessel told me that he knew nothing about the presence of our vessels at that time, and seemed to be
249 very much chagrined at the time that he couldn't enter.

Q. Now, on May 29th did you meet the "Adula" off Cienfuegos?

A. Yes, sir.

Q. At that time you served the captain of the ship "Adula" with a copy of the President's proclamation of the blockade of that port, Cienfuegos?

A. Yes, sir; I did.

Q. And of the several ports on the north side of Cienfuegos?

A. I did.

Q. You didn't give him a copy of the proclamation for Guantanamo bay?

A. There was none at that time.

Q. Now, when you boarded her at Guantanamo bay, why was she not given a copy of the proclamation?

A. Because the vessel was not allowed to go.

Q. In other words, the reason why you didn't give the "Adula" a copy of the proclamation of the blockade of Guantanamo was because she was not allowed to depart; is that the reason?

A. If you mean by a copy of the proclamation, if you mean a printed copy, I didn't have any, but a notice of the proclamation of the blockade of that port had been given to me, but he wasn't allowed to depart from there.

Q. You gave him a printed copy in the first instance?

A. In the first instance.

Q. You didn't give him any in the second instance?

A. Yes, sir.

Q. You didn't give him any in the second instance because you had no copies?

A. No, sir; I don't know whether we had any.

Q. In the second case you were not supplied with one?

A. I was not supplied with one, and because the vessel was not allowed to depart I would not have given him one in this
250 instance, unless the vessel had been allowed to depart; in other words, because the vessel had been seized there was no necessity to give her a copy.

Q. But the vessel hadn't been seized until you went aboard?

A. She was told to remain there.

Q. You met her on May 9th off a port that was blockaded and you gave her then a copy of the proclamation of the blockade of that port—Cienfuegos?

A. Yes, sir.

Q. You afterwards went aboard of that vessel off Guantanamo bay. You didn't give him any notice of any blockade of that port?

A. Yes; I have, sir.

Q. After you left the "Adula" on May 9th off the port of Cienfuegos, didn't the "Adula" steam close alongside of the "Marblehead"?

A. No; she proceeded at once into the harbor.

Q. Didn't an officer from the bridge ask Captain Walker if he would take some letters, and didn't you hear him ask that?

A. That's right, sir; that's correct.

Q. It is true, then, that she did steam close alongside of the "Marblehead"?

A. Well, this was a request by megaphone; it was close alongside.

Q Didn't the captain of the vessel ask him if he would take some letters?

A. That's my recollection of it.

Q. Didn't the captain reply that he would take them?

A. I am not absolutely satisfied about those points, but I think it was the case, and I think I went down below after returning to the "Marblehead," but I am not sure.

Q. Well, wasn't then the time that the captain of the "Marblehead" said the "Adula" could proceed?

A. I don't know that he said. I gave her permission to proceed myself.

251 Q. You saw the ship afterwards when the ship arrived outside of the port?

A. Yes, sir; I did.

Q. And you boarded her again?

A. I did.

Q. Didn't you ask Captain Walker at that time where that cable was in Cienfuegos?

A. I did not, and if any one asked him I do not know who it was. There was a Colonel Laborde, of the Cuban army. What he said to Captain Walker I don't know.

Q. Weren't you informed aboard of that ship where that cable was?

A. We got no information of the slightest value from them at all.

Q. Didn't the captain ask Captain Walker if he would take the mail for him?

A. He did.

Q. He did take it for him?

A. Yes, sir; he did.

Q. And the mail bag was sent on board the "Adula"?

A. Yes, sir; but Captain Walker was informed that the mail that

was sent by them was entirely personal letters—no official mail whatever.

Q. He took the mail for you, and at the time there were about 350 passengers, mostly women and children?

A. I think they were, sir.

Q. Now, briefly, Lieutenant, those are the circumstances connected with your boarding her off Cienfuegos at that time?

A. I don't know; there were a great many men, and if mostly women and children I am not absolutely satisfied on that point.

Q. You knew that Mr. Solis had a family in Manzanillo; he told you that?

A. Yes, sir; he told me that.

252 Q. He had a wife and four little children—four little girls?

A. He didn't tell me that. He said he had a family there.

Q. Manzanillo had not been bombarded by our fleet?

A. I had been told once that it had been.

Q. Who told you that?

A. One of our officers, but it was a mistake. He either told me that it was to be bombarded or that it had been. He afterwards told me that it was not bombarded, and I told Mr. Solis that to relieve his mind.

Q. You did tell Mr. Solis that Manzanillo had been bombarded and there was not a stone of it left?

A. I did not tell him that there was not a stone of it left. I don't know exactly what I did say.

Q. You did say to James C. Williamson on board of that ship that you were absolutely certain that Solis would be shot?

A. I never made that statement or anything approaching that statement. I did say that Mr. Solis would be shot if he attempted to leave the ship. I may have said that.

Q. Did you tell Mr. Solis, in the presence of Captain Yeats and first officer, Mr. Williamson, that Manzanillo had been bombarded?

A. I wouldn't be surprised if I did. I was told so by my commanding officer; that this would be done or had been done.

Q. You had some apprehension that Mr. Solis was acting the part of a spy, didn't you?

A. Well, yes; my impression was that he was.

Q. Was that the reason that he was put under guard?

A. I don't know, sir.

Q. Wasn't that your reason why you told him Manzanillo had been bombarded—to see what he would say on the subject?

253 A. I don't know, sir, that it was.

Q. Now, here is a man with his family in that town and he under guard and couldn't get away from that guard for a minute. What was your reason for telling him that?

A. Just to see what he would make of it—just for information.

Q. What was the purpose of it?

A. I don't know that I had any definite purpose. Mr. Solis was there with the purser and first officer, and I told it as a matter of information, and I also told of the destruction of Cervera's fleet.

Q. Now, when you said that it was almost a certainty that Mr. Solis would be shot?

A. I didn't make that statement. I deny positively and emphatically that statement. I probably stated that if he, Mr. Solis, should attempt to leave the ship he would be shot. As to Mr. Solis being otherwise shot, I absolutely deny that statement.

Q. Do you deny having a conversation with Mr. J. C. Williamson on July 2nd, in Guantanamo bay, with regard to Mr. Solis?

A. I don't remember.

Q. You don't recall it?

A. No, sir; I do not.

Q. Are you prepared to say that you have not had any conversation with Mr. Williamson about Mr. Solis?

A. Oh, yes, sir; I have.

Q. Are you absolutely certain that you have expressed no opinion to Mr. Williamson as to what would become of Mr. Solis?

A. Yes, sir; I am absolutely positive that I have not expressed an opinion as to what would become of Mr. Solis, because I didn't know. I am prepared to swear to that.

Q. You did say to Mr. Solis that it was a very peculiar business transaction?

A. I did, sir.

254 Q. Will you be kind enough to explain what would be peculiar with him to get 300 refugees at 10 pounds apiece—how would that be a peculiar transaction from a commercial point of view?

A. I knew that the ports of Santiago, Guantanamo, and Manzanillo were blockaded, and it was that Mr. Solis, a Spaniard, proposed to charter a vessel and go into a blockaded port as Guantanamo and take out refugees there, and we couldn't tell whether they were people belonging to the official class or the army or what they were, we would only have their names, and they would communicate with Santiago, where we had stopped all dispatches, and that he supposed that we would allow him to go to another port that was blockaded and then to a third port that was blockaded in the face of a refusal of our consul; that's why I say that the man was risking his money without a shadow of a chance of getting anything out of it.

Q. As to the refusal of the consul, have you any personal knowledge as to the refusal yourself?

A. Nothing, except what I have heard, and Mr. Solis has stated so himself.

Q. Suppose after the President had proclaimed a port had been blockaded, and that you were in command of the blockading ship, would you permit a vessel to enter upon the mere permission granted by an American consul?

A. No, sir.

Q. Then, Lieutenant, the permission of the consul to enter or his refusal to permit the captain to enter would have had no effect in obtaining an entry to the blockaded port?

A. Yes, sir; his refusal would.

Q. Suppose instructions were given and presented to you that the captain of a ship shall proceed to Guantanamo; that you
255 will stop immediately and communicate to the commanding officer of the vessel that you are on; that you will show to the commanding officer these sailing orders; that you will be careful not to interfere or make sk-tches of anything that you may see or hear; that you have some difficulty in obtaining a pilot, and if the commanding officer permits you to proceed that you will be able to receive from him the services of a pilot to go in. Suppose instructions of this kind were presented by the captain of this ship to you, would you say that, with those instructions, Mr. Solis was engaged in a wild speculation?

A. Yes, sir; I think that those instructions have no weight whatever; they may be merely a blind.

Q. You are aware of the fact that the policy of our Government has been to aid the Cuban refugees; you know that?

A. Yes, sir.

Q. You know that numbers of them have been sent to this country?

A. Yes, sir.

Q. You know that ships have been sent to Cuba for refugees?

A. Yes, sir.

Q. In what particular would there be any wild speculation in going to a port and seeing the commanding officer and saying: "I have come here with an empty ship for the purpose of bringing off certain refugees, and it has been the policy of the American Government to allow it; I submit to you now whether I can be allowed to enter this port." If these instructions are true, what wild speculation is there in it?

A. In the former cases the instructions had been forwarded
256 from Washington, Consul Dent simply acting as an intermediate there. Through Dent, but from Washington, the permission was granted. In this case no permission was granted. It was denied him because there he doesn't state that he was to bring out Americans; he stated formerly that he was to bring out Americans. However, he goes there to bring off people from a blockaded port and to enter another blockaded port, and then to the third blockaded port. He doesn't carry them direct from each blockaded port to Kingston, but he wants to take them from one blockaded port to another.

Q. Are you not aware of the fact that the first voyage of the Adula to Cienfuegos was to take off refugees?

A. I don't know that it was the first voyage.

Q. Do you know that the first voyage you met her was her second voyage to Cienfuegos?

A. No, sir; I do not.

Q. Do you know that on the 16th of May that she carried 200 refugees out of Cienfuegos?

A. Only by reference to the log.

Q. You say by reference to the log?

A. From consulting the log. May I consult the log?

Q. Certainly, with pleasure. You will find there by reference to an entry under date of May 10th she sailed with 350 passengers from Cienfuegos?

A. What day did you say, sir?

Q. May 10th.

A. She has, Going on May 11th, Kingston to Cienfuegos. I don't understand this log, because he has got here, "Jamaica into Cienfuegos," and then on May 11th he has got, "Bound from Kingston to Cienfuegos."

Q. I think you will find there, Lieutenant, that she sailed at 2 o'clock on May 10th.

A. How is it possible he has got on May 11th, "Bound from Kingston to Cienfuegos"?

257 Q. She arrived at Cienfuegos and was granted permission to enter, and on the following day, May 10th, she left with 350 passengers. You met her on the 9th, going in?

A. Yes, sir; I did.

Q. And on the next day, May 10th, you boarded her again?

A. Here is my entry from off Cienfuegos, the entry that I made in the log. She did leave on May 10th; she left Cienfuegos with passengers.

Q. And it was on that day that you, Lieut. Anderson, boarded her coming out?

A. That's right, sir; he has got the wrong entry in his log.

Q. Now, on the 16th of May you find that she left Kingston?

A. Yes, sir.

Q. And arrived in Santiago on the 17th?

A. Yes, sir.

Q. Sailed the same day with 200 passengers, mostly women and children?

A. I don't see anything there stating the character of the passengers.

Q. Does it state the number?

A. No, sir; nothing down here to state the number or character of the passengers. Just says, "Took on passengers."

Q. On the 21st of May you find that the vessel sailed for Cienfuegos again from Kingston?

A. That is correct, sir.

Q. You don't know whether at that time this vessel steamed down to the Brooklyn. Do you find any entries to that effect?

A. Yes, sir; down here I see on the log on the 23rd, "Brooklyn, received permission to pass after one and one-half hours' delay."

Q. You were not present aboard of the Brooklyn, Lieutenant?

A. No, sir.

Q. On the 16th of June, Lieutenant, she arrived in Cienfuegos. Do you find an entry of that kind in the log?

258 A. "Lying off Cienfuegos;" yes, sir.

Q. On the 17th of June?

A. Yes, sir.

Q. She sailed from Cienfuegos on the 19th?

A. Yes, sir.

Q. Is there any entry on the log as to whether she had refugees or passengers?

A. Says she has.

Q. Gives the number?

A. No, sir; "passengers commenced embarking."

Q. Now, what time in June was it that the "Marblehead" went into Guantanamo bay, Lieutenant?

A. June the 8th, as near as I recall it; I think the first trip was on June 6th, but I am not sure; she was there on June 8th.

Q. So you, therefore, observed that this same vessel had gone in and had on a number of trips apparently carried off refugees?

A. Yes, sir.

Q. Well, now, in the light of all that, Lieutenant, the number of those trips, assuming that these sailing instructions are correct, do you still stick to the original proposition that that was a wild speculation?

A. I do, sir.

Q. Now, isn't this the truth of the case, that the impression got abroad that there was on this vessel on one of these trips a passenger no less than the private secretary of Captain General Blanco; that created some suspicion in the minds of them; you never have discovered that any such man was on the ship. You then received information to the effect that Solis was in the Spanish service, and he was regarded as a spy, and that he had some $300,000 in gold on him?

A. I never have heard anything about Solis having any gold, or that he was in the service of the Spanish government. What I heard from two Cuban guerrillas was that Solis had a brother who was a prominent guerrilla in the Spanish army. I heard that from
259 a Cuban officer that he was a Spanish guerrilla.

Q. Don't you know that he was born in Cuba?

A. I don't remember his telling me where he was born.

Q. But his family is in Manzanillo?

A. Yes, sir.

Q. Do you know that communication existed between Kingston and Guantanamo?

A. Yes, sir.

Q. Did you not receive a message from Mr. Dent substantially to this effect, that Solis was going for the purpose of inducing the Cuban rebels in the American camp to leave?

A. That's the first I have heard of it.

Q. You haven't had the faintest idea of that, have you?

A. I never heard it.

Q. What was the cause of your suspicion against Mr. Solis?

A. The principal cause was he was a Spaniard; the next cause was, it was said that Gen. Blanco's secretary was on that ship. We were told to look out for a ship of that name, and we were told to search the ship for Gen. Blanco's secretary.

Q. And then Mr. Solis was put under guard?

A. Yes, sir; because he was a Spaniard. He was put under

guard after we had determined that there was absolutely no one on board of that description.

Q. Now, the bulletins have been issued to keep a lookout for the Adula, because she was supposed to have on board the private secretary of Gen. Blanco, and therefore you were looking out for her?

A. There was also a bulletin that she was going to attempt to run the blockade; there was in the same bulletin that she was chartered by a Spaniard, Mr. Solis; that she had the private secretary of Gen. Blanco on board, and that she was going prepared to run the blockade.

Q. Now, when was the proclamation issued of the blockade
260 of Santiago?

A. That was on the same date as that of Guantanamo—27th of June.

Q. Didn't Captain Yeates tell you that the consul had said that he had no permission or authority to give permission to pass the blockade?

A. I recall Captain Yeates telling me that, but think he told me that the consul had refused permission, and they went on to sea; that our consul was cranky and wouldn't give permission to anybody.

Q. Don't you recall that Mr. Yeates said that the reason Mr. Dent said he didn't give his permission to pass the blockade was because he didn't have the authority?

A. No, sir.

Q. Didn't you already testify that the consul didn't have authority to give anybody permission to pass the blockade?

A. I have stated that.

Q. For a ship passing around from place to place, you are prepared to say that 96 tons of coal would be too much for her to carry in her ordinary trips?

A. I am not prepared to say that.

Q. In other words, Lieutenant, if it be true that this vessel, the "Adula," that her ordinary business was to coast around the island of Jamaica, going from place to place around that coast, whether or not that tonnage of 96 tons would be an excessive amount of coal for her.

A. The only reason that I had for supposing that the amount of coal she had on board would be excessive for that trip was because she had about 16 tons in the lower hold, which she didn't habitually carry in her trips around the island.

Q. Now, if she was chartered to go to all three of the ports—Santiago, Guantanamo, and Manzanillo—do you know of any reason why she should not have carried sufficient coal on board
261 to make those trips going without a cargo—that vessel going for passengers—and then be prepared to make her regular trips?

A. I don't know, sir.

Q. Then, in that instance, you are not prepared to say?

A. No, sir.

Q. Now, Lieutenant, would it not be good sense, good economy,

for a ship agent that was sending his ship off to enter three of these different ports with any deviation such as may arise and then to resume on her return her trips around the island to put enough coal on board for her regular trip; don't you think it would?

A. I don't know, sir.

Q. Frankly, when you started, wouldn't you put in all the coal that you needed—that you would put enough coal in there that you wanted?

A. I would not put coal in the cargo's space, because you would have to put the coal in the cargo's space back into the bunker.

Q. You have stated that it was in the cargo's space?

A. Yes, sir; it was in the cargo's space—16 tons in the after lower hold—and I shouldn't put it in the lower hold and then afterwards put it in the bunkers again; but in case she intended to take the trip that you speak of it might be a good plan, only I had some little doubt that she would fill her cargo space with coal when she would have to clean up the space afterwards before she could take cargo.

Q. You say that this ship, that the "Adula," has no way of determining her speed except by a patent log?

A. She might do it by counting the revolutions of the engine.

Q. She has no other means of determining her rate of speed except by the patent log?

A. I don't know.

Q. At the time that the vessel was seized by you and, say,
262 preceding for the 24 hours, how was the wind blowing?

A. Well, I should say that the wind was blowing from the northward and eastward.

Q. Now, that would strike her off the starboard bow?

A. It would, sir.

Q. And there would have naturally been some drift to the westward?

A. Yes, sir.

Q. Now, this bank to which we have referred, the most natural thing in the world would have been for the navigator to have borne a little to the westward of that bank?

A. Yes, sir; I believe so.

Q. He could not have gone over it, could he?

A. If he had tried, he might have been there yet.

Q. You don't mean to intimate by your testimony that he went over that bank?

A. No, sir.

Q. If the bank was awash and she was drawing about 13 feet, it is a physical impossibility to pass over it, isn't it?

A. Absolutely.

Q. There was one point in her course, Lieutenant, as she neared Cuba, where you say she continued for about an hour and then headed to the westward instead of the eastward?

A. Yes, sir.

Q. About how far upon that course was she sailing when she sailed westward; does it indicate it?

A. Yes, sir; she was heading north by east one-half east.
Q. That's on the log; what voyage is that log?
A. It's on the 29th.
Q. Does that show after she changed from the west?
A. No, sir; he says, "One o'clock, north by west until 2 p.m., then east at 2 p.m."

263 Q. How is it after that?

A. He doesn't give any course afterwards; he hauls along the shore.

Q. Now, are you sufficiently acquainted with that coast and commercial navigation to say that when he got within—I believe the statement is that within 8 miles of the coast he wanted to go to Guantanamo; that he went all along the coast to the eastward; wouldn't that have been correct navigation?
A. O, yes, sir; but he says he hauled to the westward.
Q. Your position is that he held too long to the westward?
A. Yes; I couldn't understand that if he fixed his own position by observation and dead reckoning why he should not have hauled to the eastward for the entrance to Guantanamo harbor instead of continuing his course an hour longer and then hauling westward of north.
Q. Now, the wind was north and east of him?
A. Yes, sir; east northeast.
Q. Did you know anything about currents along there?
A. Well, the charts show a westerly drift, but we found an easterly drift.
Q. The chart indicates a westerly drift?
A. That I cannot say, but those currents are so uncertain that you cannot rely on them.
Q. Now, after he got into Guantanamo bay he ran up a signal for a pilot, and there was one sent there from the "Marblehead," a Cuban pilot?
A. Yes, sir; and boarding officer.
Q. Wasn't a Cuban pilot sent on board?
A. I don't know, sir; I wasn't present.
Q. Did you see the signal for a pilot on her?
A. No, sir; I didn't see that.
Q. You didn't see that?
A. No, sir.
Q. You don't know whether that was run up or not?
A. No, sir.

264 Q. And you don't know whether a Cuban pilot went on board or not?

A. No, sir; but I think there was.
Q. When did the American troops take possession of Guantanamo?
A. The American troops?
Q. Yes; the landing party, or marines. Do you consider the marines part of the land forces?
A. I can't answer that exactly.
Q. You don't know the date?

A. No, sir; not exactly.

Q. About how long before you seized the "Adula," approximately?

A. It was certainly more than a week.

Q. Then, at the time of the capture of the "Adula" we were in possession by land and by sea of Guantanamo?

A. Yes, sir.

Mr. ERWIN: Of the city, you mean?

A. Of the entrance to the harbor, not of the city; it was the bay, the entrance of the bay on one side only. We were in possession of the bay by our ships, and to the eastern shore by our marines. One side was in the possession of the Spaniards.

Q. You had possession of the bay entirely?

A. Yes, sir; by our ships.

Q. We had possession of the eastern point by our marines. Were those marines from the "Marblehead"?

A. No, sir; those were marines from the United States.

Q. The town of Guantanamo was a town of what size?

A. There is only about three or four thousand inhabitants there now; before the Cuban rebellion it was quite a city.

Q. Well, when you seized the "Adula" the town was then in the possession of the Spanish troops, the town itself?

A. Yes, sir.

Q. Now, the refugees, if her instructions are true, expected to be taken out of the town of Guantanamo, thence to the harbor, and thence to Kingston?

265 A. Yes, sir; the town of Guantanamo is connected by railroad with the town of Caymanera, and from the town of Caymanera they can come down on to the boat and go to Kingston; but they were supposed to have gone to Santiago. That is why I say this is a foolish speculation, because, as an American officer, I would not permit men to be taken out of one Spanish port and taken to another. We knew that Caymanera and Guantanamo were invested, and it was invested so closely that we had seized men carrying dispatches to there from General Perez, and if we had allowed this boat to proceed there they would have sent those dispatches on to Santiago.

Q. Now, from Caymanera to the bay there is a running line of road?

A. Yes, sir.

Q. Then, for people to get from that point to Kingston and from Guantanamo they would have to come down by rail to Caymanera to the bay and there embark on the ship?

A. Yes, sir.

Q. You found no cargo, of course, on the ship at all?

A. No, sir.

Redirect examination:

Q. In answer to a cross-interrogatory you stated that the President's proclamation of April 27th blockading or declaring Guanta-

namo and Santiago in a state of blockade was communicated, as you thought, to you by your comm under about the 28th of June?

A. Yes, sir.

Q. Was that proclamation, as you understood it, a declaration or proclamation of a specific blockade of the ports of Guantanamo, Santiago, and Manzanillo, or how was the proclamation expressed, as you understood it?

A. It was expressed that the southern coast of Cuba between such and such points were in a state of blockade.

Q. Between what points?

266 A. Between Cape Frances and Cape Cruz, inclusive.

Q. Your conclusion, then, that the public blockade or presidential blockade declared of those particular ports is drawn from the facts that those particular points are situated in that particular territory?

A. Yes, sir.

Q. Prior to that time, when was the actual blockade established by Sampson put on at Guantanamo?

A. About June 8th.

Q. Well, now, was the blockade established by Admiral Sampson then continuous and uninterrupted at Guantanamo bay to the time of the seizure of the "Adula"?

A. It was.

Q. What ships did you keep there?

A. We kept the "Marblehead." She was kept there all the time, and there were always some men-of-war in there coaling.

E. A. ANDERSON,
Lieutenant U. S. Navy, Prize Master.

Answered, subscribed, and sworn to before us this July 26, 1898.

A. E. K. DENHAM,
Rear Admiral U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

We hereby certify that the chart of the West Indies, Jamaica, and parts of Cuba and San Domingo, accompanying these interrogatories, marked Exhibit B and having on the margin thereof the names of the undersigned, is the identical chart used by witness E. A. Anderson and referred to in his interrogatories as Exhibit B.

A. E. K. BENHAM,
Rear Admiral U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

267 Endorsement: In U. S. district court, eastern division of southern district of Georgia. United States *vs.* Steamship

Adula. Prize. Interrogatories of Edwin A. Anderson. From sealed package from prize commissioners, opened by the court and now, July 27th, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

268 In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

THE UNITED STATES
vs.
STEAMSHIP "ADULA," HER TACKLE, APPAREL, FURNITURE, AND Cargo.

To Robert W. Yeats, master of the steamship "Adula," and to all other persons claiming an interest in said vessel and cargo:

Notice is hereby given you that on Monday morning, July 25, 1898, at 10.00 o'clock a. m., at the United States court-room, in the city of Savannah, State of Georgia, the depositions of Edwin A. Anderson, F. Gill, and W. Ellenberg will be taken *de bene esse* before A. E. K. Benham, Julian Schley, and Edgar Denmark, prize commissioners in the above-stated case, in behalf of the libellants.

Very respectfully. MARION ERWIN,
U. S. Attorney.

Savannah, Ga., July 23, 1898.

Service of a copy of the above notice acknowledged, and it is agreed that the said depositions may be taken orally on examination, cross-examination, and re-examination by counsel of the respective parties before the said prize commissioners, and that the testimony may be taken down stenographically and reported in typewriter by a stenographer to be appointed by the prize commissioners, and when signed by the respective deponents shall be reported by the prize commissioners in usual form.

P. W. MELDRIM,
Counsel for Atlas S. S. Co., Limited, Claimant.
ROB'T W. YEATS,
Master S. S. "Adula."

July 23, 1898.

269 In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

THE UNITED STATES
vs.
STEAMSHIP "ADULA," HER TACKLE, APPAREL, FURNITURE, AND Cargo.

Testimony *de bene esse* of witnesses produced before Prize Commissioners A. E. K. Benham, Julian Schley, and Edgar Denmark, at the United States court-rooms, Savannah, Georgia, July 25, 1898, at 10.00 o'clock a. m., in the above-stated case, on behalf of the libellant, in pursuance of the notice and agreement hereto attached.

Present: E. A. K. Benham, Julian Schley, and Edgar Denmark, prize commissioners; Marion Erwin, United States attorney; William R. Leaken, assistant United States attorney, for libellants; P. W. Meldrim, proctor for the Atlas Steamship Company, Limited, and Robert W. Yeats, master of the "Adula," claimants.

270 WILLIAM ELLENBERG, called as a witness for the libellant, after being duly sworn, testified as follows:

Q. Mr. Ellenberg, what service were you in under the United States Government on July 29th of this year, 1898?

A. I haven't been in any *in* July 29th; it was on June 29th.

Q. I meant to say in June.

A. It was what we call in the service of signal boy on the outside, to be a lookout.

Q. On what?

A. On the "Marblehead."

Q. The "Marblehead" is a United States warship?

A. Yes, sir.

Q. Well, on that particular occasion what specific duty were you performing in the afternoon?

A. I was up on the bridge, looking out for signals and vessels of every description. I was there from 12 o'clock noon until 8 o'clock that evening, on an eight-hour watch.

Q. How old are you?

A. I will be 19 the 18th of August.

Q. How long have you been in the service of the United States Navy?

A. Two years the 16th of last June.

Q. What has been your usual duties on the ship?

A. Signal boy.

Q. Do any firing at the guns?

A. Gun captain.

Q. You are also a gun captain?

A. Yes, sir.

Q. On the afternoon of June 29th, 1898, did you notice where you saw the steamship "Adula," if you know?

A. I don't know the exact place, but when I saw the smoke, not

knowing the exact ship it was, I reported there is a ship coming around the western point.

Q. Where was the "Marblehead" at that time?

A. She was lying inside the harbor; I should judge about the center of the harbor.

Q. What harbor?

A. Guantanamo bay.

Q. Now, where was the "Adula" when you first saw any signs of her?

271 A. When I first saw a sight of her I could make her out, because I have seen her before, and the minute I saw her I reported it was the "Adula." We have long glasses and I reported the "Adula."

Q. That was when you first caught sight of her?

A. Yes, sir.

Q. You saw the smoke prior to that time?

A. I saw the smoke for two or three minutes around the western point.

Q. Western point of what?

A. Guantanamo bay; I don't know the exact name of it.

Q. Look at this plat and state if you know what that is. (Here witness is handed a chart of Guantanamo bay, same being marked "Exhibit A").

A. This is a chart of Guantanamo bay, and this is the western point here (indicating), and this is the eastern point (indicating), and the "Adula" was coming around this point (indicating), looking as if she was coming from Santiago—looked to be.

Q. Now, from the looks of this chart, can you locate about the situation of the "Marblehead" at the time when you first saw the "Adula"? Where was the "Marblehead"? Take that pen, for instance, and touch about the place where you would locate the "Marblehead."

A. I think she was right abreast of this point here (indicating), but I would not say for certain—just about Fisherman's point, just abreast of Fisherman's point. There is about seven fathoms of water where she anchored.

Q. Right there (indicating)?

A. Yes, sir.

(Here witness marks in black ink the letter "M" as being about the position of the "Marblehead.")

Q. Where was the "Adula's" position, as shown on the plat, at the time that you first saw the smoke, when you saw it across the point?

A. The first time it was around here (indicating); sometimes there is low lands.

272 Q. Indicate it with the pen.

A. I think it is just to where that mark is there, sir (indicating).

Q. That mark in red ink, letter "A"?

A. Yes, sir.

Q. About how far was it from the "Marblehead" when you first saw the smoke of the "Adula"?

A. I don't know, sir.

Q. What, in your judgment, would be the distance?

A. I think it would be about 5 or 6 miles.

Q. When you first saw the smoke?

A. From the "Marblehead," but I think it was about three miles from the western point.

Q. When you first saw the smoke?

A. Yes, sir.

Q. When you first saw the smoke, would that indicate the way the "Adula" was coming?

A. We judged from the smoke, and before the "Adula" came there we saw no smoke.

Q. Could any one on the "Adula," from where you saw the smoke, see the American warships in the harbor?

A. No, sir; we could see them first.

Q. How far had the "Adula" to go in the direction to where she was going, towards the westward point, before she could see the warships there?

A. She had to get right abreast before she could see the ships inside.

Q. Is that a low or high point?

A. It is low in some points and high in others. You see that point here (indicating); we cannot be seen very well until they come around the point.

Q. Was there any American warships going out of the harbor—moving out of the harbor of Guantanamo bay towards the ocean at the time that the "Adula" was coming up to the point?

A. There was one.

Q. About where was the "Adula," on the plat, at the time that the "Adula" could have first noticed the warship coming out of the harbor?

273 A. The warship coming out of the harbor was not a very small point from the "Adula." She was over in this direction (indicating).

Q. What was her position when she could have first noticed the warship coming out?

A. About two miles. You had to use very strong glasses; otherwise you couldn't have seen her. I don't know the exact name of her, and therefore won't say the name.

Q. From the time that you first saw the smoke of the "Adula," describe the movements of the "Adula," how she moved and where she went to.

A. As far as we could watch she came down in this direction (indicating); she came up by here (indicating); she came from the westward and stopped very near abreast this point here.

Q. The eastern point?

A. That eastern point there; about there (indicating).

Q. Along what is called the eastward point?

A. Yes, sir; and then she hoisted the jack, as we call it, and then

she kept steaming around from the outside; she made no attempt to come in for about 20 minutes.

Q. At that time about where was the American warship that was coming out of the harbor?

A. I don't know where she was.

Q. Had they passed anywhere near each other?

A. I could not say.

Q. This ship, you say, moved around there and hoisted a pilot's signal at that location where she was?

A. Yes, sir; and she kept steaming around there about 20 minutes; she got abreast of the eastward point, and we sent out a Cuban pilot.

Q. From the position of the "Adula" at the time that persons upon the "Adula" could first see that American warship coming out of the harbor, was the "Adula" in a position that she could have turned around and gotten away from there without being captured?

A. She could if she wished, as far as we could see of her.

274 Q. That she could have gotten away from this boat going out?

A. As far as I could see, she could have gotten away if she chose to.

Q. How near was that warship from the "Adula" when she was going out of the harbor?

A. I don't know.

Q. Was it in gun-fire distance?

A. Yes, sir; in gun-firing distance.

Q. Could she have gotten away without being in danger of being hit?

A. She could, because I have been told that the guns on the "Vixen" could not carry two miles, and she couldn't have been hit if she had wanted to get away.

Q. You don't know the comparative speed of the two vessels?

A. No, sir.

Q. Well, after this Cuban pilot was sent aboard of the "Adula," what movements did the "Adula" make then?

A. She came right in the harbor with him on board.

Q. Where did she anchor?

A. She anchored right abreast Guantanamo river; right here, sir (indicating).

Q. It was where that letter "M" is marked in red ink (indicating)?

A. Very near there, sir.

Cross-examination:

Q. Was there steam up on the "Marblehead"?

A. We always have steam up—steam up and the anchor ready for slipping.

Q. If the "Adula" had sailed from Kingston—usually in going for Guantanamo bay this would have been her natural course—along here, wouldn't it (indicating)?

A. That would have been her natural course, but from what I had pumped out of their men she had been to Santiago.

Q. That's your statement that you derived from others?

A. No, sir; that's what they said. I asked them, and they
275 said she had been to Santiago.

Q. The question that I asked you, if she had been sailing from Kingston to Guantanamo bay that would have been her proper course?

A. Yes, sir; that would have been the point that she would have had to make in there.

WM. ELLENBERG.

Answered, subscribed, and sworn to before us this July 25, 1898.

A. E. K. BENHAM,
Rear Admiral U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

276 FREEMAN GILL, called as a witness for the libellant, after being duly sworn, testified as follows:

Q. Mr. Gill, you are in the United States Navy?

A. Yes, sir.

Q. On what ship?

A. United States ship "Marblehead," sir.

Q. What is your general occupation on the ship?

A. Armorer; hold position of gunner's mate, first class.

Q. Were you on board the "Marblehead" on the afternoon of June 28th, 1898?

A. Yes, sir.

Q. The 29th also?

A. Yes, sir.

Q. On June 29th, in the afternoon, what position was the "Marblehead" in in reference to Guantanamo bay?

A. How was she laying, sir?

Q. Yes. Look at this chart, "Exhibit A."

A. This is the entrance to the bay (indicating).

Q. Here is the entrance to the bay (indicating)?

A. The "Marblehead" was lying in about here, in this position (indicating), here inside of this western point. The harbor, I think, is north and south. She was lying north. I believe she was swung.

Q. Indicate by the pen about where you think she was.

A. I think she was right around in between them two, about there (indicating). (Witness locates the position as being between the letter "M" in black ink and the letter "M" in red ink, about the 5¾-fathom-mark.)

Q. Did you see the steamship "Adula" on that afternoon?

A. Yes, sir.

Q. What position was the "Adula" in when you first saw her?

A. When I first saw the "Adula" she was rounding the point.

Q. Rounding what point?
A. Rounding the westward point, sir.
Q. Indicate with this pen here about the position about the westward point. About what position on the plat would you
277 locate the "Adula" when you first sighted her?
A. I couldn't locate her very close. When we seen her it was from where we were lying until she got up around this point (indicating), and I couldn't see exactly where she was out there. I would locate her somewhere around here (indicating). (Witness locates the position of the "Adula" at this point by a cross-mark in black ink.) I located her from the deck and I had no glasses and I located her with my eyes.
Q. Had you seen any indication of her otherwise than by actual sight of the ship? This is prior to the time that she was rounding the point?
A. We seen smoke out there. We seen smoke and was watching for it to see what it was.
Q. At the time that you first saw the "Adula," caught a sight of her, was there any American warship moving out of the harbor?
A. Yes, sir; the "Vixen."
Q. What was the "Vixen"—what kind of a ship?
A. She is a small auxiliary cruiser.
Q. When you first saw the "Adula" at the position, we will say, of that cross-mark, what position was the "Vixen" in?
A. She was away inside of that point here. She was pretty close to the "Marblehead," not a very little ways from her. She might have been a little mite off to the southeastward of her.
Q. We will just put a letter "V" where she was at the time you saw the "Adula" going out. Where was the "Vixen"?
A. Pretty close to where the bight makes in after you round the eastern point and runs out to where the cable station. I would locate the "V" somewheres pretty close around there.
Q. We will put a little "V" there (indicating). She was there at the time you first sighted the "Adula" coming around the point. The "Vixen" was a little sort of behind the "Marblehead"?
278 A. She was just about in a line.
Q. Right in a line?
A. Yes, sir.
Q. Did the "Vixen" keep on moving out?
A. Keep on moving out?
Q. Did she go out of the harbor?
A. She went out of the harbor; yes, sir; rounded the point out and stood to the westward in the channel around the harbor until she sighted the "Adula."
Q. Then what did she do?
A. The "Adula" put her helm down. She put her helm to the port and went around and stood out, and then the "Vixen" then—but that time we had the launch down, and when she seen the "Vixen"—the "Vixen" still kept coming out—she went and broke the pilot flag at the fore—she broke the jack at the fore.
Q. What do you mean—that she had a flag up for a pilot?

A. Yes, sir.

Q. What I want to get at is how did the "Vixen" and "Adula" do? Did the "Vixen" keep right on up here by her?

A. The "Vixen" kept right on by her.

Q. Where did the "Vixen" pass her?

A. The "Vixen" passed her to the westward. She stood by. She stood in about that time, and I thought she was coming in, and she came in the harbor. She went into the harbor and was boarded.

Q. Did the "Vixen" continue going out to sea?

A. The "Vixen" went down to Santiago, I think.

Q. Well, now, indicate on the plat with your pen about the position of the "Adula" and the position of the "Vixen" at the time that the "Vixen" passed her in going to sea. Indicate on the plat where the "Adula" and where the "Vixen" was at the time the "Vixen" passed the "Adula" going out to sea.

A. When the "Vixen" passed her?

Q. Yes, sir.

279 A. All right. It was right here the "Adula" passed. It is indicated by the letter "A" in black ink. The "Vixen" was coming out of the port, and the "Adula" when she came in broke the pilot flag. She was right inside here—inside the point (indicating), and the "Vixen" was here at Guantanamo, off in this direction. She might have been a little further to the westward than that is. The position of the "Vixen" is indicated with the letter "V," with a prime mark before it.

Q. Now, if those were the positions of the Adula and the Vixen at the time that you speak of, the Vixen must have passed the Adula before she got there, if the Vixen was passing out of the harbor, hadn't she?

A. The Vixen was passing out of the harbor when the Adula came around this point, and then she turned round and round back again, and then the Vixen was out to sea, and she slewed around and around, back again, around the point, and then the Vixen passed her.

Q. Then the point of passing must have been right off this western point?

A. The westward point is the point of passing, but to get into it you have got to stand up a little to the middle—to the eastward. There is a red buoy out in the water, and you go round the buoy first here, and then you are in the bay. The Vixen couldn't get out any other way.

Q. At the time the Vixen was in this position, marked with a cross-mark, was the Adula in gunshot of the Marblehead?

A. No, sir; you couldn't sight her. She was out in the wake of the land. You couldn't hit her.

Q. In the wake of the land?

A. Yes, sir; around the point.

Q. Was she near enough to shoot her?

A. If she was in full view, but you couldn't see her enough to get a range at her.

Q. Well, if the Marblehead had wanted to chase her and the Adula wanted to get away, was the Marblehead in position
280 to have taken her?

A. Not very handy. We would have to have gotten under way, and she was under way, and by the time we got our anchor up and got around she could have got, I suppose, about a half hour's start of us; not more than three-quarters of an hour start.

Q. What is the speed of the Marblehead now, sir?

A. I don't know, sir; she is foul; her bottom is foul.

Q. What speed has she made?

A. I have been in her when she made 17 knots.

Q. What speed has the Adula?

A. Well, I suppose about 12.

Q. You don't know that for certain?

A. No, sir; I don't know anything for certain about the speed of the Adula.

Q. When the Adula was in this position, when you first sighted her, at the cross-mark, and the Vixen being about the position of the Marblehead, but the Vixen being under way, going to sea, was the Adula in such a position that the Vixen could have overhauled her if she had turned and run?

A. I presume she could, sir; but there would have been a signal made if she wanted to do it.

Q. I mean if she wanted to do it.

A. Yes, sir.

Q. Now, when the Adula was off, moving in front of the harbor, as you have described, was the Vixen then in a position to make a prize of the Adula if the Adula had attempted to escape?

A. By that time we were making signals to her and had sent out the launches.

Q. To whom?

A. The Adula.

Q. I mean could the Vixen have done that if she wanted to.

A. Yes, sir; I presume she could by going about and coming back.

281 Cross-examination:

Q. This channel is about how wide; do you know?

A. I don't know exactly.

Q. Approximate it as near as you can.

A. You mean the channel here between the two points?

Q. I mean the ship's channel.

A. I couldn't tell you, sir.

Q. The same channel that the Adula used to go into the harbor was the same channel that the Vixen used to go out, wasn't it?

A. No, sir; the Adula came into the harbor. When she came into the harbor she stood to the eastward. When the Vixen went out she stood to the westward and then down to the eastward.

Q. How close did they get together at the nearest point, one going

to the south and one going to the northward, one entering and one leaving; how close did they come together?

A. I suppose within half a mile.

Q. The Vixen was an American warship going out, and this was an English ship coming in?

A. Yes, sir; but the Vixen don't draw the amount of water that the Adula does.

Q. I am not asking you about the depth of water, but one was going to the northward and one to the southward?

A. One to the westward.

Q. Yes, sir; one entering the port and one leaving the port?

A. Yes, sir.

Q. The Marblehead had steam up?

A. No, sir; she might have had fire under her boilers, but she didn't have steam up.

Q. She was ready to get under way?

A. I am not a fireman, and I don't know anything about that.

Q. You were ready to move, and were on the alert and ready to weigh your anchor; you were ready to start and ready to get under way?

A. I don't know anything about that.

282 Q. You know that in a port of that kind you generally have steam up?

A. Yes, sir.

Q. And don't you know that they had steam up?

A. I don't know that; they had fires banked; they don't generally have to keep their boilers going.

Q. How long would it have taken her to get under way?

A. Between a half and three-quarters of an hour.

Q. You mean to tell me that it would have taken that ship from a half to three-quarters of an hour to get under way?

A. Yes, sir; because we had boats down and would have had to get them up.

Q. How long would it have taken that ship to get under way, leaving the boating party out of the case? I mean in a case of emergency how long would it have taken that ship to move.

A. In case of an emergency it would have taken her about half an hour.

Q. It would have taken a half hour for the ship to get a move on her?

A. Yes, sir; as far as I know. I don't know what was in the fire-room.

Q. You say this British ship, the Adula—about how far was she from the Marblehead when you first saw her?

A. She must have been fully a mile. I don't know.

Q. About a mile. You have travelled on the Adula coming here, after the capture; you were on her?

A. Yes, sir.

Q. You know how fast she travels?

A. We have travelled all ways, but we made full speed for about four hours, and half speed for about 4 hours.

Q. What was her average speed?
A. I suppose about 8 knots.
Q. Now, if the Adula was coming from Kingston she would come in there in about the same course that you saw her?
283 A. If she was coming from Kingston, she could cross and strike across that way from Port Antoin, but she would have to strike to the westward.
Q. And this vessel you found coming in the harbor in daylight—what time of day was it?
A. It was in the evening.
Q. Along in the afternoon?
A. Yes, sir.
Q. And the American ship Vixen going out?
A. Yes, sir.
Q. She signalled for a pilot and a pilot went aboard of her?
A. No, sir; the captain went aboard of her.
Q. I mean after the signals were made.
A. Yes, sir; but after the signals were made asking what that strange vessel wanted.
Admiral BENHAM: Did she make that signal to the Adula?
A. They told them to make it, but I don't know whether it was made.
Q. But you did see the pilot signal run up?
A. On the Adula?
Q. On the Adula.
A. Yes, sir.
Q. You saw her come up and saw her when she anchored?
A. Yes, sir.
Q. And as she came in, before she anchored, they went aboard of her?
A. Yes, sir.
Q. A vessel without a cargo?
A. They went aboard of her before she anchored; yes, sir.
Q. She had no cargo on board of her?
A. No, sir.

Redirect examination:

Q. Before the Adula got to this point indicated by the cross-mark on this plat, when you first saw her, was she in a position prior to that time to see the American warships in the harbor?
A. No, sir; they couldn't see them unless they had a man at the masthead, and then they couldn't see her. She wasn't lofty enough to see over that point.
284 Mr. ERWIN: I desire the commissioners to mark the chart by which the witnesses William Ellenberg and Freeman Gill testified to as chart, attached and marked Exhibit A.

FREEMAN GILL.

Answered, subscribed, and sworn to before us this July 25, 1898.

A. E. K. BENHAM,
Rear Admiral, U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

We hereby certify that the chart of the entrance to and bay of Guantanamo, hereto attached and marked Exhibit A, is the chart referred to and used by the witnesses William Ellenberg and Freeman Gill.

A. E. K. BENHAM,
Rear Admiral, U. S. N., Commissioner.
JULIAN SCHLEY,
Commissioner.
EDGAR DENMARK,
Commissioner.

Endorsement: In U. S. district court, eastern division of so. district of Ga. United States *vs.* Steamship Adula. Prize. Interrogatories of William Ellenberg and Freeman Gill, and consent to take testimony. From sealed package from prize commissioners, opened by the court and now, July 27th, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

285 *Letter of Instructions from W. P. Forwood to Captain Yeates.*

Dictated by Capt. Forwood.

ATLAS STEAMSHIP COMPANY, JAMAICA AGENCY,
KINGSTON, *June* 28, 1898.

Capt. Yeates, S. S. "Adula."

DEAR SIR: I enclose herein a copy of the agreement under which your vessel is proceeding on, and on board the ship will be the charterer, to whom I now introduce you, Mr. José R. Solis, and I ask you to show him every attention on the voyage.

You will see by a perusal of the agreement that you are on a voyage wholly and solely for the conveyance of refugees from the ports named to Kingston.

On your arrival at Guantanamo, to which port you will proceed direct, you will find, no doubt, American warships off the port. You will, when signalled to, immediately stop and communicate to the commanding officer the voyage that you are on, and, in fact, you can show him these sailing orders, and I do not think that the commanding officer will make any trouble whatever to your continuing the voyage into the port.

You must be most careful on your arrival there not to interfere or in any way make any observation or sketches or anything that you may see or hear of, but adhere strictly to the duties of your ship.

At Guantanamo it is likely there may be some difficulty in obtaining a pilot, and if the commanding officer gives you permission to proceed it is just possible that he may be able to tell you where you can obtain the services of a pilot to go in.

From Guantanamo you will proceed to off Santiago. Here you will meet the other fleet and carry the same instructions out with them as I have mentioned to you in reference to Guantanamo. The charterer is telegraphing at once to Santiago for a pilot to come off to meet the ship, if permission is granted, to pilot your ship into the port.

From Santiago you will proceed to Manzanillo, and from thence back to Kingston.

The charterer, Mr. Solis, may order you direct from Guantanamo to Kingston or from Santiago to Kingston, and in such case you will follow out his orders, which he will give you in writing.

286 He has the option of going to the three ports, but it may be convenient for him only to go to one or even two.

The boat's crew that is mentioned in the appendix of this agreement you will provide, but it will be necessary for you to have the ensign in the stern, so as to show your nationality.

You will not allow any provisions of any sort to leave your ship at any of the ports or to do anything that is contrary to the laws of the country or that could be interpreted as a breach of faith in being allowed to pass the blockade and enter the ports, and I must ask you not to permit any of your crew to land at any of the ports, and only yourself, if necessary, to visit the British consul.

Wishing you a pleasant voyage, I remain, dear sirs,

Yours faithfully, W. PEPLOE FORWOOD,
Gen. Ag't, Ja.

Please cable your arrival & departure from each port.
W. P. F.
#2.

#10. *Agreement of the Atlas S. S. Co. with J. R. Solis.*

It is hereby mutually agreed between the Atlas Steamship Company, Limited, hereinafter called "the company" and Mr. José R. Solis hereinafter called the charterer, as follows:

That the company put at the disposal of the charterer the steamer "Adula" for the conveyance of passengers from Cuban ports hereinafter to be named, to Kingston. The ports that the vessel is to go to are Manzanillo, Santiago and Guantanamo; but it is distinctly understood and agreed by the parties aforesaid, that it shall not be deemed a breach of this agreement should the steamer be prevented from entering any of those ports from causes beyond the control of the company, but that should she be able to enter one or all of them, she shall embark the passengers that the charterer shall engage for her and proceed on her voyage.

287 If she is not permitted to enter either Manzanillo, Santiago or Guantanamo the vessel is to return to Kingston and the voyage shall be considered completed, and the charter money hereinafter referred to earned without any deductions.

The company reserve the right to refuse to take any passengers that in the captain's opinion is in such a state of health as may seriously interfere with the obtaining of pratique at Port Royal.

The passengers are to be provided with such accommodation as

the ship can offer at this moment, and are to be provided with victualling at the company's usual scale of charges, the victualling to be paid by the passengers.

The port charges are payable by the charterers, and the charterer is to provide a good and efficient Government pilot to conduct the ship safely into the ports which have been named. Should she be permitted to enter them, the charterer guarantees that the proper and efficient clearances shall be obtained for each port, so that the ship shall not be subjected to any fines for breach of regulations.

For these services the charterer shall pay the company for the hire of the vessel one hundred pounds per day or part of a day for the first ten days of the voyage. After the expiration of the first ten days, the charter money shall be at the rate of fifty pounds per day or part of a day, and it is agreed that the charter money shall count from the time the ship leaves the wharf at Kingston until she returns to the wharf at Kingston. A minimum payment, however, is agreed to of five hundred pounds.

On the signing of this agreement the charterers shall pay to the company the sum of one thousand pounds as a deposit for the payment of the charter money. The company herewith give their undertaking to the charterer that should the charter money be less than the amount of deposit, that they will refund to the charterer the balance on demand, it being always understood that a minimum payment of £500 is payable by the charterer.

288 It is understood that the company shall provide all coals, stores and crew's wages.

Signed in triplicate this twenty-eighth day of June one thousand, eight hundred and ninety-eight by the parties aforesaid.

For THE ATLAS S. S. CO.,
W. PEPLOE FORWOOD,
General Agent.
JOSE R. SOLIS, *Charterer.*

Should the vessel be stopped for repairs to machinery or through being stranded, the time she is stopped, and / or aground shall not be counted as time under the attached agreement.

The company will provide the charterer with a boat and crew for the purpose of entering any of the ports named in the agreement attached. The company will give the option to the charterer for another voyage similar to this on similar terms, providing the charterer gives the company twenty-four hours' notice after the arrival of the steamer at Kingston, the voyage to commence, if the ship be ready, twelve hours after the expiration of the twenty-four hours.

For THE ATLAS S. S. CO., LTD.,
W. PEPLOE FORWOOD,
General Agent, Ja.
JOSÉ R. SOLIS, *Charterer.*

Endorsement: Taken from sealed package from prize commissioners, opened by the court, and now, July 27th, 1898, marked filed. S. F. B. Gillespie, deputy clerk.

(Here follow photolithographs, pp. 289 to 309, inclusive.)

310 No. 270.

UNITED STATES OF AMERICA,

[Vignette.]

DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that the document hereto annexed is a true copy of the proclamation by the President of April 22, 1898, the original of which is preserved in this department's archives.

In testimony whereof I, William R. Day, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 27th day of July, A. D. 1898, and of the Independence of the United States of America the one hundred and twenty-third.

[Seal Department of State, United States of America.]

WILLIAM R. DAY.

311 (Blockade of Cuban ports.)

By the President of the United States of America:

A Proclamation.

Whereas, by a joint resolution passed by the Congress and approved April 20, 1898, and communicated to the government of Spain, it was demanded that said government at once relinquish its authority and government in the island of Cuba, and withdraw its land and naval forces from Cuba and Cuban waters; and the President of the United States was directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States to such extent as might be necessary to carry said resolution into effect; and

Whereas, in carrying into effect said resolution, the President of the United States deems it necessary to set on foot and maintain a blockade of the north coast of Cuba, including all ports on said coast between Cardenas and Bahia Honda and the port of Cienfuegos on the south coast of Cuba:

Now, therefore, I, William McKinley, President of the United States, in order to enforce the said resolution, do hereby declare and proclaim that the United States of America have instituted, and will maintain a blockade of the north coast of Cuba, including ports on said coast between Cardenas and Bahia Honda and the port of Cienfuegos on the south coast of Cuba, aforesaid, in pursuance of the laws of the United States and the law of nations applicable to such cases. An efficient force will be posted so as to prevent the entrance and exit of vessels from the ports aforesaid. Any neutral

vessel approaching any of said ports, or attempting to leave the same, without notice or knowledge of the establishment of such blockade, will be duly warned by the commander of the blockading forces, who will endorse on her register the fact, and the date, of such warning, where such endorsement was made; and if the same vessel shall again attempt to enter any blockaded port, she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as prize, as may be deemed advisable.

Neutral vessels lying in any of said ports at the time of the establishment of such blockade will be allowed thirty days to issue therefrom.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 22d day of April,
[SEAL.] A. D. 1898, and of the Independence of the United States, the one hundred and twenty-second.

WILLIAM McKINLEY.

By the President:
JOHN SHERMAN,
Secretary of State.

[Stamped:] Bureau of rolls & library, Department of State, Jul-26, 1898.

312 No. 271.

UNITED STATES OF AMERICA,

[Vignette.]

DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that the document hereto annexed is a true copy of the proclamation by the President of June 27, 1898, the original of which is preserved in this department's archives.

In testimony whereof I, William R. Day, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 27th day of July, A. D. 1898, and of the Independence of the United States of America the one hundred and twenty-third.

[Seal Department of State, United States of America.]

WILLIAM R. DAY.

313 (Blockade—Southern Cuba and San Juan, Puerto Rico.)

By the President of the United States of America:

A Proclamation.

Whereas, for the reasons set forth in my proclamation of April 22' 1898, a blockade of the ports on the northern coast of Cuba, from

Cardenas to Bahia Honda, inclusive, and of the port of Cienfuegos, on the south coast of Cuba, was declared to have been instituted; and

Whereas, it has become desirable to extend the blockade to other Spanish ports:

Now therefore, I, William McKinley, President of the United States, do hereby declare and proclaim that, in addition to the blockade of the ports specified in my proclamation of April 22, 1898, the United States of America has instituted and will maintain an effective blockade of all the ports on the south coast of Cuba, from Cape Frances to Cape Cruz, inclusive, and also of the port of San Juan, in the island of Porto Rico.

Neutral vessels lying in any of the ports to which the blockade is by the present proclamation extended, will be allowed thirty days to issue therefrom, with cargo.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-seventh day
[SEAL.] of June, A. D. 1898, and of the Independence of the United States the one hundred and twenty-second.

WILLIAM McKINLEY.

By the President:
J. B. MOORE,
Acting Secretary of State.

[Endorsed:] J. Boyd. President's proclamation of blockade.
[Stamped:] Bureau of rolls & library, Department of State, Jul-26, 1898.

314 *Agreement of Counsel as to Certain Letters.*

It is agreed that the following letters, numbered 9, 12, 13, 28, 29, 30, 31, 32, 36, 40, 41, 43, 44, 45, 48, 50, 51, 52, 53, 54, 55, 56, 67, 146, and 147, and numbers 8 and 13 of the record relate solely to commercial and domestic matters, and that they be abridged as follows, the same being a correct statement of the correspondence found on board the Adula, but not copied out in full, and that the same may be used in evidence for either party in lieu of sending up either the originals or copies.

GARRARD, MELDRIM & NEWMAN,
Proctors for Claimants and Appellants.
WILLIAM R. LEAKEN,
Assistant U. S. Att'y, Proctor for Libellant.

315 No. 9. Letter to Senor D. C. Vidal & contents, consisting of other letters written in Spanish, May 27, 1898.

No. 12. Letter to Sr. Edwardo de Cardena, June 22, 1898 (Spanish).

No. 13. Letter to Sr. Enrique Lauten, Plaza de Armas, Manzanillo, isla de Cuba (noted on envelope, "Kindly forwarded by Sr. Solis"), written in German, dated June 23, 1898.

No. 28. Letter from E. Divi to Sr. D. Cay I° Vidal, June 28, 1898 (Spanish).

No. 29. Letter to Sr. Solis from I° Vidal, June 28, 1898 (Spanish).

No. 30. Documents, passage del Emanuel Raul; contents, Nos. 30, 30*a*, &c., to 30*k*, both inclusive, dated 17th May to June 4th, 1898 (Spanish).

No. 31. Letter to Sr. Don Cayetano Vidal & contents, 31*a*, 31*b*, June 28, '98.

No. 32. Letter to Messrs. Schuman & Co. & contents. Noted on envelope, "Kindly forwarded by Mr. Jose R. Solis," including two letters unopened, addressed "Sres. Schumann y Ca., Santiago, Cuba," with notice attached by U. S. Gov't that "Despatch to Spain or Spanish colonies prohibited on account of war," dated New York, Ap'l 21, 1898, the whole stamped from Finke & Co., Kingston, Jamaica.

No. 36. Ship "Adula's" register (endorsement of Lieutenant Anderson on page # 317).

No. 40. Letter to Senor Don Francisco, Accor (enclosure), June 18, 1898.

No. 41. Letter to Capt. P. M. Beal, June 13, 1898, with enclosures of accounts current (Spanish).

No. 43. Letter to Messrs. E. Atkins & Co., May 23, 1898, with accounts current enclosed.

No. 44. Letter to J. N. S. Williams, c. o. Messrs. E. Atkins & Co., June 13, '98, with another letter enclosed.

No. 45. Letter to E. Atkins & Co., with accounts current, etc., enclosed, dated June 8, 1898.

No. 48. Letter to Sr. Lacelles de Mercado y Ca., with enclosures, J'e 18, '98.

No. 50. Letter to Miss Caridad Esteran, # 148 W. 98 St., New York, J'e 14, '98.

No. 51. Letter to Miss Lena Spencer, Sussex, England, May 27, 1898.

No. 52. Letter to Sr. Don Julio Forrablas, Kingston, Ja., June 18, 1898.

No. 53. Letter to Mr. Fran *at* Bastarrethe, 115 W. 95 St., N. York, J'e 15, '98.

No. 54. Letter to Mrs. O'Naghten, 202 W. 136 St., N. York, June 17, 1898.

316 No. 55. Letter to Charles D. Fowler, Kingston, Jamaica, with 7 sealed letters enclosed, dated June 19, 1898.

No. 56. Letter to Charles D. Fowler, Kingston, Jamaica, June 13, 1898, with 5 letters enclosed.

No. 67. Letter to Sr. D'n Carolina Alonzo, June 15, 1898.

No. 146. Manifesto of cargo of Adula, May 10, 1898.

No. 147. Letter to F. R. Solis from P. H. Bocler, May 11, 1898.

No. 8. Letter addressed to Don Plicaido R. Cespedes, care Jose Solis, dated June 5, 1898.

317 #36. *Extract from Ship's Register.*

Endorsements made by Lieut. E. A. Anderson.

Guantanamo bay, Cuba, U. S. "Marblehead," Commander B. H. McCalla, comm'd'g.

Visited the "Adula" June 29th and searched holds for contraband of war; mustered crew and inspected ship for persons not on crew's passenger lists; visited ship Adula again on July 1st and inspected her for parties in excess of crew and passenger lists; seized all papers belonging to Mr. J. R. Solis, charterer, and ship's papers.

E. A. ANDERSON,
Lieutenant U. S. N.

Off Cienfuegos, Cuba, U. S. S. "Marblehead," May 9th, 1898.

Delivered copy of proclamation of President of United States declaring blockade of north coast of Cuba, including ports on said coast between Cardena and Bahai Honda and the port of Cienfuegos, on the south coast of Cuba.

E. A. ANDERSON,
Lieutenant U. S. N.

318 *Agreement as to Extracts from "the Gleaner" Newspaper.*

It is agreed between counsel that the following extracts from the Daily Gleaner, a newspaper published at Kingston, Jamaica, of the dates of June 14th and June 25th be placed upon the record in the place of the whole and entire papers found upon the Adula by Lieutenant Anderson and numbered in the record as documents numbers 153 and 154.

GARRARD, MELDRIM & NEWMAN,
Proctors for Claimants and Appellants.
WILLIAM R. LEAKEN,
Assistant U. S. Att'y, Proctor for Libellant.

319 *Extracts from the Daily Gleaner (Published at Kingston, Jamaica,) Tuesday, June* 14, 1898.

The war a joke.

The editor of the Gleaner.

SIR: By the telegrams published I cannot but think that the war between Spain and the United States is one of the greatest jokes on record. It is all fun on one side and death on the other; but for the chivalry displayed it would be monotonous.

I gather from one of the latest telegrams, given briefly, that something like this must have occurred after the sinking of the "Merrimac" with coal in the harbour of Santiago:

Admiral Cervera (seeing a boat with men rowing towards his

ship): "Come on board, gentlemen; I am most happy to make your acquaintance; consider yourselves our guests and friends."

Hobson (one of the leaders): "Thanks, Admiral. It has been a very unfortunate occurrence that we have to trouble you."

Admiral Cervera: "Not at all; not at all" (calling for Capt. Bristament). "Come here, Captain. Take this letter over to my esteemed friend, Commodore Schley" (which was as follows):

"MY DEAR COMMODORE: This will be handed you by Capt. Bristament, with the information that eight of your brave fellows are with us, not as prisoners of war, but as friends, and will be treated as such.

Yours very affectionately, CE-VERA,
Admiral Spanish Navy."

Commodore Schley, on receiving this epistle, thanked the Admiral very much for his kindness, and invited Captain Bristament
320 to witness a review of his fleet, which he accepted, and was highly pleased at the quickness of the Americans. He left, after bowing himself off the American flagship.

I suppose the next we will hear is that Commodore Schley intends giving a ball on board of the flagship, and that Admiral Cervera and officers will be invited.

I am, etc., GEO. P. DELISSER.

At Fort Antonio.

"Saturday.—The Wanda and Triton, despatch boats, brought news this morning of the landing of a portion of the troops sent to attack the Spanish forces at Santiago and its provinces. According to the cable message of Thursday, General Greely permitted the correspondent of the Standard to publish that 27,000 troops were to be transported to Santiago. The cable gave a summary of the strength of the invading army, which shows that a most formidable force was to be landed. The Spaniards have not more than 7,000 troops around this portion of the island, and, as there is no communication by rail from Havana to Santiago, the only possible way for the Spaniards to augment their forces is by ship. This also seems prohibitory owing to the presence of the United States squadron in the neighborhood and the number of vessels employed as scouts along the coast. To attempt to march to Santiago would be a foolhardy job. At the best the country is not provided with other than bridle tracks. The unsurmountable obstacles in the shape of mountains, whose altitude is lofty and steepness indescribable, at once preclude them from attempting it, while at the present time the seasons of rain are at their worst. The most daring and zealous general would halt rather than risk the lives of the men to do battle with
321 the elements. The Spanish troops will therefore be entirely cut off from reinforcements; such is the state in which the troops find themselves, and from the account given by the insurgents some of them have deserted and are now enlisted in the Cuban army.

The first transport arrived off Caimanera on Thursday night and with considerable ease landed 800 marines. There was no opposition to the landing; not a single Spaniard showed himself; the place was deserted, and one of the first acts of the officer in command was to burn down a few houses; he said because of their unhealthy appearance. The men were all in a most happy state of mind on Friday evening, and were discussing in a cheerful spirit the work they were soon to be engaged in, when firing was heard near by, which at once told them of the presence of the enemy. The enemy had come unobserved, and, taking advantage of thick growth of trees, crept stealthily towards some men who were stationed as pickets. There was a good deal of firing. The outpost, realizing their position, ran to the camp and reported. A company was immediately sent off to chase the intruders away. This they succeeded in doing without any apparent loss on either side, except one of the outpostmen, who has not returned to camp and is supposed to have been shot when surprised.

The landing of the troops was to have been concluded Sunday, when active operations were to begin."

Latest Telegrams.

The "Twickenham."

NEW YORK, *June* 13.

"A despatch to the Herald from St. Nicholas, Hayti, says the 'merchantman' captured by the auxiliary cruiser *at* St. Louis just off Morant point, Jamaica, last Friday night was the Br. Str. 322 Twickenham, on board of which are 3,200 tons of coal for the Spanish fleet. She has been sent as a prize to Key West.

The captured collier is a long steamer, which went first to Martinique, expecting to effect a junction with Admiral Cervera's squadron at that island.

The fleet had departed before her arrival, and she was detained there as a suspicious vessel by the French authorities. Word was brought to Admiral Sampson that the 'Twickenham' had left Martinique on Wednesday. The 'St. Louis' was immediately dispatched to intercept her. Not twenty miles out of Kingston, on Friday night, the 'St. Louis' fell in with the 'Twickenham.' The captain of the collier, seeing flight was impossible, hove to and was boarded by a boat's crew from the St. Louis. The British captain at first made a vigorous denial that he was carrying coal for the Spanish fleet. The vessel was searched by the men from the St. Louis, and in the fire-room a man in overalls was found who only spoke Spanish. After a vigorous cross-examination by Captain Goodrich, of the 'St. Louis,' this man admitted that he was a Spanish officer in charge of the cargo.

On the approach of the 'St. Louis' he had thrown his papers and commission overboard. He appeared to be badly scared at the way things had turned out, and he was sent as a prisoner of war to Key West on board the captured steamer."

Will Show Fight.

LONDON, *June* 13.

"Rear Admiral Sampson's acquisition of a base for coaling and supplies at Guantanamo is universally recognized as practically sealing the fate of Santiago. It is believed that the Spanish troops will show a good fight before the city is captured."

323 "It is reported in New York that 800 American sailors landed on Friday to the west of Caimenara bay under the protection of warships, while the 'Marblehead' opened fire on the arsenal and telegraph office, which was defended by a Spanish infantry regiment. According to the Herald, the shots completely destroyed the French cable office, the Spaniards being obliged to decamp. The Americans seized the railroad and the colliers in the harbour. The telegraph office was completely destroyed and was found deserted."

"A despatch boat off Santiago reports that the Americans now hold thirty-five miles of the coast east of Santiago, including Guantanamo harbour, and that 20,000 Spanish troops at Santiago are preparing to desperately resist the Americans, who have landed for the rebels 3,000 rifles, 300,000 rounds of ammunition, and large stores of provisions."

324 *Extract from the Gleaner, June* 25, 1898.

"The Benito Estenger" sails.

The British steamer Estenger, Captain Perry, which was loading for the past week at Mr. Orrett's wharf, sailed at 9 o'clock on Thursday night under the British flag for the Cuban coast. It will be remembered that the Benito Estenger came into this port some time ago flying the Spanish flag, and that her register was changed to British. She took a cargo of provisions, of which the following is a list: 10 packages of coffee, one package of aerated water, 1,000 barrels of flour, 30 butts fish, three packages bacon, two trs. ham, 200 packages kerosine oil, 82 bags rice, 15 barrels beans, 19 packages onions, 20 brls. meal, 480 bags corn.

Captain Cole, who is well known here, sailed as captain of the vessel under the new register. She cleared for Manzanillo and Trinidad de Cuba, and the provisions were ostensibly taken on board for the starving and distressed people at the ports.

Good Cuban authority alleged that the provisions are not intended for the poor folks at all, but for the Spanish troops. On board the Adula, which arrived from Cienfuegos this week, there was an individual officially appointed by the captain general in Cuba to make arrangements in Jamaica for regularly supplying the Spanish troops with provisions—in fact, to make Jamaica a base for Spanish purposes. This gentleman's name was given us as Ramon Pastora. He is accompanied by two pilots who know the south coast of Cuba perfectly. The Benito Estenger's mission to the Cuban coast, is then,

we understand, an outcome of arrangements by Senor Pastora for supplying the Spanish troops. It is stated that the cargo of the Estrenger will be landed at Manzanillo, taken them to Tunasdezeaza, from there to Cienfuegos, whence it will be sent across the island to Havana.

* * * * * * *

A London telegram states that the report that the Spanish fleet had returned to Cadiz is now confirmed.

Despatches from Cainmera report that the Texas and Marblehead on Wednesday evening commenced firing on the town, sending electric projectiles to watch the movements of the Spaniards.

The Americans believe they will soon be masters at Santiago de Cuba.

154.

325 1898.

U. S. T. B. Porter	J. C. Fremont, lieut	July 28th.
U. S. T. B. Ericsson	N. R. Usher, lieut	July 23rd.
U. S. S. Marblehead	B. H. McCalla, commander	Aug. 15th.
U. S. S. Annapolis	J. J. Hunker, commander	" "
U. S. S. Solace	A. Dunlap, commander	" "
U. S. T. B. Rodgers	J. L. Jayne, lieut	" "

The foregoing claims of officers and crews of the above-mentioned United States war vessels were filed with the price commissioners asking for participation in the Adula prize money.

GARRARD, MELDRIM & NEWMAN,
Proctors for Claimant and Appellant.
WILLIAM R. LEAKEN,
Assistant U. S. Att'y, Proctor for Libellant.

326 464. *Bill of* (coat of arms of Great Britain) *Health.*

PORT OF KINGSTON, JAMAICA.

I hereby certify that the S. S. "Adula," commanded by Captain Yeates, is about to sail from this port of Kingston, Jamaica, bound for Manzanillo, Guantanamo, and Santiago, with a crew of 35 men, captain included, and — passengers.

I further certify that at the time of granting this document no plague nor any other contagious or infectious disease prevails in this port or its vicinity.

In testimony whereof I have hereunto set my hand, at Kingston, this 28th day of June, 1898.

JNO. M. STANSON,
Secretary Central Board of Health.
VIST.

Endorsed in Spanish.

327 *No. 6. Personal Passport of Mr. José R. Solis.*

Isla de Cuba. No. 12. Ano de 1896. 009,012.

Cedula personal. 9a. Clase, 1 peso.

Provincia de Stgo de Cuba 50 por 100 de recargo municipal
Blco 50 idem idem provincial.

D. José R. Solis Vazquez natural de Sto de las Vegas provincia de la Habana, de 44 años de edad, de astado casado y profesion comercio habita en calle Marina numero —, y reside habitualmente en id empadronado al numero.

En Manzo. 13 de April de 1897.

En interesado, P. o El Secratario.

NICOLAS TANSONY.

328 *Translated Copies of Telegrams.*

14. June 11, 1898. Alfonso Martinez to Solis.

From Alfonsa Martinez, Myrtle Bank hotel, Kingston, June 11, 1898, to Solis, Paynes lodgings, Montego bay.

Charter "Ramona" condition that she come to this port.
You must come at once.
(Signed) MARTINEZ.

16. Telegram from *from* Sam'l Hart & Son to Solis, June 21, 1898.

From Samuel Hart & Son, Montego bay, to Solis, Myrtle Bank hotel, Kingston.

Goods all aboard, yarns plantains tomorrow morning, Millar says must go to sea tomorrow; will be ready to leave at 9 o'clock; wire your instructions if he must wait.

17. May 7, 1898. From Bori, St. Ann's bay, to Perez, for Solis, 68 Queen street, Kingston.

We are assured that you will be seized by American vessels in case vessel carries provisions to Cuba.

23. May 5, 1898. From Bori, Kingston, to Solis, Chacon house, Montego bay.

There is no ship here; is it worth while to go to Lucea to try and get a schooner? Let me know tomorrow.
I will leave St. Ann to look for a vessel.

24. June 18, 1898. From Samuel Hart, Montego bay, to Senor Solis, Myrtle bank, Kingston.

Schooner Amethyst here, 40 tons, cannot agree. Flenruch shall engage her for you, you must wire promptly.

329 # 15. May 5, 1898. From Bori, Kingston, to Solis, Chacon house, Montego bay.

Let me know if schooner leaves St. Ann today. Tomorrow I go to said port. Answer at once.

18. June 26, 1898. From Marconelrn, Kingston, to Solis, Montego bay.

A friend of yours asked me to tell you to come Monday without fail.

#19. From Carbajosa, St. Ann's bay, June 14, 1898, to Solis, Chacon house, Montego bay.

I am awaiting vessel, will arrive tomorrow to load her here. I will leave for your port right after. We will clear the Emanuel from (Falmouth) Falmut. Offer Mr. Nuries vessel called Mabel Howard for £150. I believe it will be convenient that you see him, advising me by wire whether he considers the purchase. She is 140 tons. I think that she is leaking.

20. From Carbajosa, St. Ann's bay, June 21, 1898, to Solis, Myrtle Bank hotel, Kingston.

If you know positively that they suppressed duties see today brig Schulte, and try to put the cargo, payment there. On the contrary case inform them that they will have to pay me two per cent. commission.

21. From Samuel Hart & Son, Montego bay, June 20, 1898, to Solis, Myrtle bank, Kingston.

Too late schooner despatched, will look for another. Your arrival will clear him by the time you come. We are offered the schooner Ocean Flower, 40 ton, sixty pounds; do you care to have?

22. From Carbajosa, St. Ann's, June 14, 1898, to Solis, Chacon house, Montego bay.

Do not go to Kingston I leave today for your place (Montego bay). We will load the Emanuel immediately. Look for me tomorrow, early.

330 # 25. From Carbajosa, St. Ann's bay, June 14, 1898, to Solis, Chacon house, Montego bay.

Go to Kingston, we will meet Friday. Leave Montego in charge for the collection of vegetables for the Emanuel. Other merchandise will be from the warehouse; that she may be cleared Monday.

26. May 9, 1898. From Bori, St. Ann's bay, to Solis, Chacon house, Montego bay.

Letter received. Light judgments mistaken the money will come back (return). Disposed to send cargo. I look for you tomorrow to prepare shipment.

331 # 5. *Letter Addressed to Sr. Leonardo Ros.*

(Translation.)

No. 5.

ESTEEMED FATHER: I have been here since the 17 inst., as you have already learned by mother's cablegram to you. I decided to come here to spend some time with the family because I had nothing to do after the harvest.

Salvador made my account at the rate of $100, silver, p'r month, which only makes $40, reduced to gold, making therefore $240, gold, for the six months. Out of that amount I had to pay $140 for the trip to New York; to Oswaldo Ros for bill, $33; this for my teeth, and $50 for my trip here, leaving me, therefore, with only $17.

The salary that I receive here from Salvador is not up to the amount of work that I am doing, and I wish you would advise me whether or not to continue, for I am spending bad nights for a mere pittance, and I really believe that there is no future whatsoever in the business in which I am engaged.

I cannot say more about this for want of time. I am sorry that I am not able to talk to you about this matter (business). As soon as things are settled I will avail myself of any opportunity offering to go there. I left Leonardito and Maria in perfect health.

Without time for more, I say good-bye.

Your son, MANUEL ROS.

P. S.—I hope that you understand this. I have no more time; the steamer leaves immediately.

M.

332 # 33. *Letter to Senor Leonardo Ros'y Rodriguez.*

(Translation.)

No. 33.

KINGSTON, 28*th June*, 1898.

DEAR COUSIN PEPE (JOSEPH): We are in receipt of your letter of the 17th inst., by which I see the condition of Cuba at that date.

I suppose that on the same day of the sailing of the Adula you received a letter from Guillermito (Willie) by a French man-of-war that came whilst she went out, which I learned by some of the man-of-war's passengers. I am writing in a hurry, as it is 10 a. m. and the steamer leaves at 11.30.

By a cablegram from father I learned of poor Pepe's death. It is

better for him to have died than to be alive and always suffering, for there was no possibility of his getting well from his illness. Manuelico has been here about a week. You ought to know this by a cablegram we sent to father. He intends going to Cuba if the war ends before October, which I expect; otherwise we will go via Hayti.

I regret that I have no time in which to give you details of this place, though I have many; but I am writing in a hurry and cannot put my ideas together.

Tho' life here is tiresome, I cannot complain, for there are many girls here from Cienfuegos and Havanna and one can be amused, especially as we can take the girls out without having their parents or some member of the family to chaperon them, as it occurs with you.

We hear that the war will end soon; but I cannot say anything about it, because it is not allowed, the correspondence being private. I can only say that we shall soon see each other.

R. Sierra's wife died a few days ago. We must always have quinine here on account of fever. At Magdalena's house
333 every one is sick in bed. Tell Manolo that he has not written me a word. In case of an opportunity by which you can answer me, you can do so through father, for letters will not be brought by mail. When you write tell me all about things there, as I am anxious to know. Excuse faults. Without more time,

Your cousin, RICARDO.

Attached is an envelope marked "Sor. Don Leonardo Ros'y Rodriguez—para entregar à Don Jose L. del Castillo y Colas (hijo) Santiago de Cuba, Cuba."

334 #34. *Letter to Senor Jose Marimon from O. Fons.*

(Translation.)

KINGSTON, *June 28th*, 1898.

Sr. D. Jose Marmion, Cuba.

ESTEEMED FRIEND: After six weeks of having been unable to write to you on account of the presence of the American squadron before that port, today I am told with great secrecy that Mr. Solis, of Manzanillo, with the steamer Adula (English) is going to run the blockade to carry provisions or take out passengers. I take this opportunity with great pleasure of hearing from you and of my house. We know no other news here than that from American sources. Otherwise this town is very tranquil, and everybody respects us, as we mix with no one.

I have just received a cable from Vias, in which he says, "Order Marmion to remit by cable existing funds." If there is any one here that remits by cable, I will be greatly obliged to you if you comply, or, on the contrary, remit to me through Mr. Solis (or passenger in your confidence) all our funds you have belonging to our house, either in checks on England, France, or Spain, or in gold.

In view of the fact that the war is being prolonged, we have decided with my wife and Givi to go to Europe on the steamer leaving July 5th, on which also leave several merchants from Cienfuegos and Habana that are here.

As I suppose, the stock in hand of my house has been exhausted. I believe you must have closed the store to save expenses, retaining Angel to collect the rents and because we desire to retain him in case of being able to return to work when this cursed war is over.

I also think you must have closed my residence and stored
335 my furniture at the store.

Vias is trying to arrange with Beuwo the reduction of the rent during the time the store is closed on a basis of 3 onzas a month, which is the amount Lescaille Grimany pays.

I do not believe what you tell me about the draft of Puig, of New York, as it is not credible if you had arranged it in the manner you told me in your last cable. In the first place, I have left instructions to Angel not to remit said draft without word from me or Vias. Indeed, I do not know if he sent a draft of nearly three hundred pounds to Liverpool, of which there was not time enough to hear from, besides there was a difference of half a dollar in the price of bacon, and finally, as it was a bill on the other side, by common consent with Vias, we did not think of liquidating it until everything had been settled. Moreover, by the American papers we know officially that in the United States they do not send any letter that goes or comes from Spain, and in virtue of which Spain will not send those going to the United States; so that if you sent the draft by mail try to get it back by all means at your disposal, for in addition to our not wanting to send it, it runs a great danger of not reaching its destination.

If it is possible, send me by the bearer one hundred cigars and two hundred boxes brown pectoral cigarettes and some papers. Send me news of all of yourselves, of the families of Gran and Juan; Perez, the partner of Vinas Parramon y Co., and of my cousins, Lorenzo and Paco. Remember my wife especially to the families Gran and Juan Perez, of whom she often thinks. Say to Grauthat is he desires to send his family to Europe, to send them here, for, as I said before, we leave on July 5th and they can go with us.

As we do not know if the bearer of this will be able to
336 enter, I would be greatly obliged to you if on receiving this you send me a cable saying "arrived," for my tranquil-ity, and if on the contrary I will cable you that of Vias and another of my departure.

My regards to all, and especially to Juan Gran and Angel Besoln, and yourself what you wish, from your true friend,

O. FONS.

I do not write more and I do not write to Angel, as I have not been given over half an hour.

337 # 35. *Letter to Mr. Adolphe J. Corivaldi.*

MONTEGO BAY, JAMAICA, 15 *June*, 1898.

A. J. Corivaldi, Esq., Kingston.

MY DEAR ADOLPHE: This serves to introduce to you Mr. José R. Solis, who came recommended to me from Manzanillo de Cuba. We have had some business together on a former voyage, and I have found Mr. Solis all that he was represented to be. He goes to Kingston with his friend, Mr. Carrahosa, and they may require legal assistance there. I have therefore recommended them to call on you for this purpose should they desire help. It appears Mr. L. L. Fraser made a sale to one of their partners, Mr. Boei, and has received payment, but not made delivery, or it may be there has been some *mala fides* on the part of Mr. Boei as well. At any rate, they will instruct you fully themselves possibly and make direct arrangements with you as to their requirements.

I will appreciate your attention to them and remain

Your affectionate bro., S. G. CORINALDI.

Attached to this letter is an envelope marked "Adolphe J. Corinaldi, Esqr., 9 Church street, Kingston."

338 # 42*a*. *Letter to W. G. Beale.*

CENTRAL SOLEDAD, CIENFUEGOS, CUBA, *June* 17, 1898.

W. G. Beal, Esq., 54 Bushnell street, Boston, Mass.

MY DEAR MR. BEAL: Enclosed please find your ac. with this estate to May 31, 1898, with balance to your credit of $5,617.39, which I trust you will find in order.

You will, I know, be glad to see by these lines that we are still doing business, and, though the end looms up largely in the not very remote future, we still have enough to satisfy the cravings of the inner man. What a surprise this has been to everybody! It was confidently stated and as confidently believed when war was declared that 15 to 20 days was the limit of the existence. Here we are two months without anything entering, and it is said we can hold on for another month.

Your patana is doing a big business transporting war materials to Castillo, though I am afraid there is not much except glory in it for you. The Ramona also has always a full passenger list, but mostly "deadheads."

Pepe keeps as cheerful as ever and seems to get along very well with his mayodomo. I do not hear any "kicks" now.

I wanted to write to the Capt., but I am afraid I cannot this mail. Perhaps you will tell him from me that I have put the Gubairo force on our list as part of the armed guards of Soledad. It is only a matter of form, but was necessary, as the Capt. had no arms or ammunition and had to be supplied from here. I regret

to say the Gubairo fields are in a terrible condition. The
339 late fire has quite ruined very many canaverals. The lands on the upper side of the brazo line are quite ruined and will have to be replanted. The others where the fire passed over them are full of grass, and if you see any prospects of an early settlement of this war they should be cleaned at once or as soon as possible.

I find I have time for a line to the Capt., and I will ask you to be kind enough to forward it. With kindest regards, believe me to be

Yours very sincerely, L. T. HUGHES.

340 #42*b*. *Letter to Capt. P. M. Beale.*

CENTRAL SOLEDAD, *June* 17, 1898.

MY DEAR CAPT.: I have done a big pile of writing today, but I find I can still spare energy enough to write you a few lines. You will, I have no doubt, have an opportunity of wading through the 18 pages I have written to E. A. & Co., so I will not trouble to repeat what I have written there. You, I know, will not be sorry or very surprised to hear that Vilarino has left here. He has no good will for me, I know, but it does not keep me awake at nights. We have a very excellent man now, and he is making the men stand round in great shape. Vilarino has left the estate, bag & baggage, oxen, carts, and cows, and if he can do us any harm no doubt he will, but we are not worrying about him.

A week ago, when I was in Cienfuegos Innocente, he told me that Vilches had 2 yoke of your oxen in the "hippodrome" in Cienfuegos, and I went to see them and met Vilcher there. I asked to see the oxen and recognized them as some that had been in Soledad with your bueyada. He said they were his and had been all the time in Rosario and had never been in Soledad. I went to Cacicedos, and he met me there later, and we agreed that until I could see Posada he would not remove the oxen and I would advise him through Mr. Sacicedo. On arriving here I telephoned Posada, but could not clearly understand his explanation, so suggested that he go and explain the circumstances to Cacicedo, which he did next day to, I believe, Mr. Cacicedo's satisfaction. Posada told me later that the oxen were some you exchanged with Vilches, and that they were here with your bueyada to try and save them, but he did not like to tell me about them. Then when one day he took away
8 yoke for a convoy he did not return these 2 yoke, but left
341 them in Rosario for Vilches to take away; so the matter ended. I would not have been so suspicious about the affair if Vilches had not said that the oxen had never been in Soledad with your oxen, as I was certain one of them had.

I met Rose in town one day. She was very well and said everything was all right round the house. Mirazo has been very ill in the hospital for some weeks, but returned to the Colonia a few days ago, and, while he is not well, he is much better than he was. I took 10 long Remingtons over to Gubairo this week and a box of ammunition. They now have 17 arms there and over 3,000 rounds

of ammunition, so are well provided. Posada has made a fort of the casa de maize, and it is a great safeguard for the houses. He has cut down the platonal, as the rebs. were going there every few nights. Since then they have not fired a shot.

We are having a very wet spring. We were fortunate in getting our plantings in early, and they are coming along very well.

The Colonia is in a very bad way, and I strongly advise you to clean if you see any hope of a speedy settlement, even if you only clean the best canaverals. Send me a wire when you get this, and if you wish to do any cleaning I will do all I can to help. I hope you are having a good rest and not worrying about things.

With kindest regards to your son, who no doubt remembers me, and yourself, believe me

Yours very sincerely, L. T. HUGHES.

Attached to this letter is envelope marked "Capt. P. M. Beal, c. o. Mr. Walter G. Beal, 54 Bushnell street, Ashmont, Mass., U. S. A."

342 # 49. *Letter to Mrs. Henry Jenkins.*

CENTRAL SOLEDAD,
CIENFUEGOS, CUBA, *June* 14, 1898.

MY DEAR SISTER: I cannot thank you for your many letters rec'd because I have not rec'd them, though I have no doubt you have written several times in the past 2 months, but I do thank you, Dearie, for your cable, "every one well;" it came at a time when I was very "blue" & very effectively cheered me up. I had sent two cables previously to Jack, but could not tell whether he had rec'd them, so I thought I would try you direct, and the result was a happy success. I do not mind half so much the unpleasantness of the situation, now that I know you are all well and that we have still a means of communication open. Cables are expensive, but yours was well worth what it cost.

Well, the time goes on, and we are still in the same position; as far as we know here, the situation is quite unchanged and so far there is no sign of any finish. There has not been any fight at all that we know of. The Yankies have been round the different ports and have done a lot of shooting, but the most miserable exhibition of gunnery; at the forts outside here they fired over 500 cannon-shots one day and only managed to tumble down the light-house, but utterly failed to silence the shore batteries. The noise was tremendous, & though we are at least 15 miles off we could feel the earth tremble with every discharge, and even the small guns were plainly heard. The total result of all that for their side was 7 men wounded; it has been the same everywhere, tremendous firing & no results; a great number of the Yankie
343 shells do not burst and are found all over the place unexploded; others explode hours after they have been fired. I have seen some that have been picked up, beautifully made but apparently defective. Truly the Yankies are a wonderful people. Unfortunately for themselves, they are just a little bit too

clever; this defect of their shells is really a very serious thing for them. Just think what would have happened to them if they had gone to war with us two years ago, as they wanted to. This is a severe lesson to them, as, if they do win in the end, Spain will spin the war out to a much greater length than the Americans expected, and the latter will not or are not having the walkover they confidently and bum-tiously expected. For us the worst of the situation is that we are getting short of provisions & the Yankies will not let any come in. They are trying to starve the island into submission. This hits the thousands of poor people who had hard enough times to live before this very hard, and the misery among the poor is already terrible; for the rich & *and* for the soldiers there are supplies yet for some time, but thousands of poor people will starve to death in the next month if matters don't change very soon. The very people that the Americans professed to have so much sympathy for and for whose sake they were going to drive the Spaniards from Cuba will in their dying agonies of starvation curse the Americans as the author- of all their troubles. I am doing what little I can for this district. I have had nearly 200 people employed all the time, and the little money they have been earning has helped to keep this neighborhood from suffering the distress already felt in other parts, but I will soon have to stop and save what food supplies we have for ourselves and for the soldiers we have to keep on the estate to keep away the insurgents, who to show their
344 "gratitude" to the Americans would otherwise burn us out and maltreat our people, as they have done on other American estates.

MacKinley & his gang of bandits will have to give a terrible reckoning some day for this most uncalled-for & wanton war and their manner of carrying it on.

You will be glad to hear we remain very quiet here. There are quantities of soldiers in the neighborhood, and I have some officers to breakfast or dinner very frequently. They are all most kind, and we have not suffered any inconveniences from the war to mention. On the contrary, I have been the recipient, as Mr. Atkins' representant, of great attention. There was a general order to collect all the horses for use of the troops, and while the country round has been scoured for horses they have not taken any of ours. In fact, one that was taken by an overzealous under officer was immediately returned when the colonel of the district came to hear of it. Of course, if this continues very much longer, horses & cattle will all have to go; but so far we have been quite unmolested.

We are having a splendid spring for cane-growing; rains every day & a good hot sun. The fields are looking better than I have seen them before, and promise a very large crop next year, if we are able to make it. I have just finished planting about 200 acres of new cane, a larger planting than they have made here in the spring before; but people were very plentiful and glad to work for low wages & their food.

I get a cable from Mr. Atkins nearly every week and send him one in return. That is our only means of communication open,

except an occasional steamer calling for passengers from Jamaica, such as this opportunity. I have not had a letter from outside the island for nearly two months now. The Br. steamer "Adula"
345 from Jamaica is due here tomorrow to take passengers. I propose sending this & other letters by her, but there is no hope of her bringing a mail. The last time she came she brought a file of Standards to May 2. I managed to get them and read them through, advertisements and all. I hope to get another batch tomorrow. Dear old sister, how much I wish I could look forward to having a letter from you to know how you all are, and especially my two dear little darlings, Enid & "No. 2." I have not been able to hear yet what her name is. Tell Enid her uncle often thinks about her & wishes he could have one of her sweet kisses; that she must be a good girlie & take lots of care of her daddie, mammie, & little sister. She must be getting a big girl now. I suppose the Williams family are enjoying themselves in Victoria by now. I wonder how poor old Gustus is getting along. I hope he has found some suitable work to do. I am glad he did not come out here. One is enough in this mess.

Soon after you receive this Lena will be getting her holiday, and I hope she will be able to give you the pleasure of her society for part of them. Poor little girl, she has been worrying a bit about her "Novio." I have no doubt but when you all get together you will just have to brace each other up. You see I am considerably conceited to take it for granted that you all are thinking about your boy, but I know you are often. Perhaps if I had known how much I had to go through I would not have stayed here, when I had the chance to get away, but I would not have done my duty if I had run away. As long as I can hear from you sometimes I don't mind much. This won't last long, and there will be good times here when it is all over.

Another sheet & I must stop. I have written 14 pages to Mr. Atkins and still have more to write.
346 I don't think I shall have time to write home by this steamer, but this is such a general letter that it will do to go round, so they will excuse me, I know, as another letter could only be a repetition of this. There is nothing of interest to write about.

I owe the Doctor a letter, & it lies very heavy on my conscience. If you see him or Mrs. Evans give them my best 'spects. I would give a double physician's fee for one of the Doctor's racy letters just now. Well, I must draw this to a close. My love to dear dad & mother, who are, I hope, keeping well. Dad will be busy with his harvest soon. Now, tell him not to go & work & get hay fever, as usual. To Miss Con, to whom I owe a long letter, that I will try & pay off next steamer; to Henry, ask him if he has found that joint farm we are to take together next year, and to you & yours, my darling old sister.

God bless & take care of you all.

Your affectionate brother, FLEW.

JUNE 17.

Mail leaves tomorrow. Nothing new. Wish I was going inside this.

Attached is an envelope marked "Mrs. Henry Jenkins, Greenfield House, Canton Cardiff, South Wales, G. B."

347 # 61. *Clearance Papers of Steamship "Adula" from Kingston, Dated June* 15, '98.

Port of Kingston. 1935. No. 119.

These are to certify, all whom it doth concern, that Wm. Walker, master or commander of the S. S. Adula, burthen 372 tons, mounted with no guns, navigated with 36 men, British built, and bound for Cienfuegos, Cuba, having on board stores & ballast, hath here entered and cleared his said vessel according to law.

Given under my hand, at the custom-house, at the port of Kingston, in the island of Jamaica, this 15th day of June, one thousand eight hundred and ninety-eight.

[Seal "Collector of Customs, Kingston, Jamaica."]

A. A. O'REALLY,
For Collector of Customs.

348 # 64. *Agreement between Mr. Fowler & Atlas Company, May* 21, 1898.

ATLAS STEAMSHIP COMPANY, JAMAICA AGENCY,
KINGSTON, *May* 21*st*, 1898.

It is hereby agreed between Mr. Fowler, at present residing in this city, and the Atlas Steamship Company for the chartering of the S. S. "Adula" to go to Cienfuegos forthwith, and Trinidad, if so ordered at Cienfuegos, and back to Kingston, on the following terms:

Mr. Fowler to pay at the rate of £100 per day, with a minimum payment of £500, quarantine detention at the risk of the owners of the ship. This sum will include 200 adult passengers, 2 children under 11 years of age to be taken as one adult, children under three years free. Passengers to be victualled by the ship at the rate of 4/ per day or part of a day; this sum to be paid with the charter money. Port charges and passenger tax to be paid by the charterers. The ship is to provide authority to pass the blockade at Cienfuegos. Should Trinidad be blockaded, and the fleet prevent the vessel entering, she is to proceed to Jamaica without any deductions to be made from the monies to be paid under this agreement.

Should the charterers exceed the number of 200 passengers, they are to pay the company at the rate of £2 per adult, and children as above, that is, two children under 11 years to count as one passenger and children under three free.

The minimum charter money £500, victualling of passengers at

8/ per head and extra passengers carried as per this agreement is to be paid at Cienfuegos by Mr. George R. Fowler before the sailing of the ship; and any balances, should there be any, to be paid
349 here in Kingston by Mr. Fowler out of a deposit to be made by Mr. George B. Fowler to Capt. Walker of £200.

Spanish sovereigns to be taken at nineteen shillings and three pence.

350 #62. *Letter of Instructions to Capt. Walker from Capt. Forwood, May 6, 1898.*

Dictated by Capt. Forwood.

ATLAS STEAMSHIP COMPANY, JAMAICA AGENCY,
KINGSTON, *May 6th*, 1898.

Capt. Walker, S. S. "Adula."

DEAR SIR: When your vessel is coaled and provisioned you will please proceed direct to Cienfuegos, at which port consign your ship to Mr. Fowler or other officer acting as British consul. You will receive from Mr. Fowler passengers up to, say, 200, and from thence you will proceed back to Kingston with all possible speed.

Mr. Steel, who will be going with you, has my written instructions as to the financial part of the voyage.

These instructions are to you as commander, and kindly carry them out specifically. There will be outside Cienfuegos, in all probability, United States men-of-war blockading the harbour. On nearing them please fly your British ensign and house flag, and when close to the flagship stop, and an officer will likely board you. To him hand the enclosed letter and follow his instructions as to entering the harbour of Cienfuegos or not. Should you be permitted to pass, you will hoist a signal for a pilot, and you should take necessary steps to see that he is an authorized pilot and not an ordinary fisherman. The harbour is dotted with torpedoes, and it is only an authorized pilot who would know where — will be.

You will, of course, fly your British ensign in the harbour from daylight to dark, and be most careful that nothing whatever
351 is done in your ship that is against the existing rules and regulations of the harbour.

In leaving and in passing the blockade, be careful to salute the ships and the forts with your flag, and it may be better if you ask the officer who permits you to pass the blockade in going in if it will be necessary for you to stop your vessel on leaving again, and in case he states that it is necessary you will, of course, carry the order out.

I have made no arrangements about the victualling of the passengers; the vessel has simply been chartered, and the steward can charge two shillings a meal to the cabin passengers and one shilling to the deck passengers. There will be a large number of passengers on board and, of course, they cannot expect to have everything as they would wish for.

Wishing you a pleasant voyage and speedy return, I remain dear sir,

Yours faithfully, W. PEPLOE FORWOOD,
Gen. Ag't, Ja.

352 #65. *Letter of Instructions to Capt. Walker from Capt. Forwood, May 16th, '98.*

Dictated by Capt. Forwood.

ATLAS STEAMSHIP COMPANY,
JAMAICA AGENCY, KINGSTON, *May 16th*, 1898.

Capt. Walker, S. S. "Adula."

DEAR SIR: I enclose herein for your private information a copy of the agreement that I have made for the charter of your vessel to Santiago de Cuba, to which port please proceed direct. The agreement is clear and plain.

You will consign the ship to Badell & Co., Santiago de Cuba, and notify them of the hour that you anchor, at which moment the 24 hours referred to in the agreement will run. After the passengers are on board and they give you your clearance, you will notify the hour, and if it exceeds 24 hours, you will ask them for a receipt to that effect.

You will observe I am taking the risk of quarantine; it is therefore very necessary that you have everything clean on the bill of health. I am writing to the British consul to ask him to endorse on it that there has been no infectious diseases for so many months, and that the passengers embarking are all from that city.

The cleanliness of the vessel when she arrives in Kingston will enable you to get pratique with such a bill of health. Be most careful that no sickly looking passengers go on board the ship, and you had better allow your officers to tally them on board, so that your number will be perfectly clear for your charter-money. By getting Messrs. Badell & Co. to give you a certificate as to
353 number, etc., it will clear yourself as to any dispute.

Kindly hand my letter to the British consul yourself.

Wishing you a pleasant voyage, I remain, dear sir,

Yours faithfully, W. PEPLOE FORWOOD,
Gen. Ag't, Ja.

354 #66. *Letter to Capt. Walker from Capt. Forwood, May 21, 1898.*

Dictated by Capt. Forwood.

ATLAS STEAMSHIP COMPANY,
JAMAICA AGENCY, KINGSTON, *May 21st*, 1898.

Capt. Walker, S. S. "Adula."

DEAR SIR: I enclose you a copy of the agreement I have made for a further voyage to Cienfuegos for your guidance and instruc-

tion. By it you will observe that the ship on this occasion takes the risk of quarantine.

The most important matter you have got to look after is to see that no sick people are on board, and that the vessel is as cleanly as the circumstances will allow on her arrival at Port Royal.

You will observe further that our charter is for 200 passengers, and over and above that number we are paid for extra. It will be therefore necessary for your officers to count the passengers as they come on board, so that you can settle with Mr. Fowler, at Cienfuegos, about the payment.

The special-payment clause in the agreement I would draw your attention to; it is perfectly plain.

Calling at the port of Trinidad is subject to Mr. Fowler's orders and of our being able to get over the blockade. If we are not able to do this, then proceed on your voyage to Kingston. The pass through the blockade is enclosed herein, and I have got it on the clear understanding that you bring over a Mr. Hoffman from Cienfuegos. If you cannot get him, you must get a medical certificate, attested by the British consul, that it would be death to the man to remove him.

355 The victualling of passengers is undertaken by the ship, and in order to assist the steward's department it will be necessary for you to tell off as many of the crew as may be necessary to assist the stewards; in fact, after the passengers are on board I would abandon any attempt to do any work whatever in the ship except keeping her clean and attending to the passengers.

I would suggest that you take off the 'tween-deck hatches No. 1 & 2, and put windsails down the hatches, and allow the second-class passengers to use the 'tween-decks, as it will lessen the crowd on the upper deck.

You want to ask the chief engineer to make the best possible speed home he can, so that you will arrive here in time to get pratique without detention. I have had considerable trouble with the Spanish consul in getting clearance on account of your bringing a mail from the American ship, and I have only succeeded in getting clearance on the proviso that the vice-consul goes on this ship.

There are some few letters that are going of a family nature, and no doubt the vice-consul will allow you to take them on shore. You had better treat the man as decently as possible, as we may want to send the ship to Cienfuegos again.

In giving this letter to the blockade, be sure and ask the officer if he would allow the ship to pass another voyage without cabling to Washington.

Bill of health.—Be careful to see that clause is put on the bill of health to the effect that the last case of disease, and that of a mild nature and not epidemic, was at least 42 days ago. It was the want of this clause that quarantines the ship the previous voyage.

356 Wishing you a pleasant voyage, I remain,

Yours faithfully, W. PEPLOE FORWOOD,

Gen. Ag't, Ja.

P. S.—In the last clause of the agreement enclosed you will see a mention made that £200 has to be deposited with you by Mr. Fowler there for Mr. Fowler here, out of which certain balances has to be paid. This is not a "may-be" deposit, but "to be made." You will observe and you will point out to Mr. Fowler that you will be unprepared to leave until this deposit is paid, as, of course, all other monies that is called upon to be paid by the agreement. You do not want to mince matters with Mr. Fowler, but just make drastic threats to insist upon the payment of this deposit as per this agreement.

W. F.

357 #72. *Letter from Capt. Yeats to His Parents, July* 13, 1898.

ATLAS STEAMSHIP COMPANY,
S. S. "ADULA," *July 13th*, 1898.

MY OWN DEAREST PARENTS: It is some weeks now since I wrote you, first on account of our hurry & bustle round the coast, & later, during the past fortnight, on account of the "Adula" & those on board being held by the naval authorities at a place called Guantanamo, where for some days I was not allowed to write even to acquaint Capt'n Forwood, at Kingston, of my position, or even to write poor dearie; but since then I've managed to write short missives, which I sincerely trust she has rec'd safely—dear old girl. What a terrible state she must have been in on first hearing the news, but I hope & pray that when she had heard from me & knew exactly how things were her poor mind would be at least a little easier, & my mind is far from being easy, but I pray God my darlings are all right. Immediately I can I will wire. And now to tell you dear ones how it is or was that we got into this pickle, which has not come as any surprise, as I have anticipated this for some time; it is I didn't think I should be in command when it happened, but it was my luck to be, I suppose. We left Kingston on June 28th; the following evening, at 5.30, I arr'd off the port of Guantanamo, got the pilot, & anchor-d. Before proceeding I must tell you that we had on board the gentleman who chartered the vessel, a Mr. Solis, a Spaniard, & that's how & where the trouble has been caused. Shortly after anchoring Com'd'r McCalla, of U. S. S. "Marblehead," sent the steam-launch & word by the doctor, asking if I would go on board & see him. This I did & was shown into the com'd'r's presence. He shook hands &
358 asked me to sit down in a most friendly fashion. "Have a cigar, Capt'n?" Says I, "Yes, I don't mind." Says he, "What papers have you brought from the American consul at Kingston" (this question after a homely little chat)? "None," says I. He replied, "I'l- seize your ship." "Very good," says I. He rung for the sentry & tells that gent. to send the officer of the watch to him. In comes Lieut. Anderson (the first one that ever boarded us from the American fleet off Cienfuegos). "Take an armed guard on board the 'Adula,' muster all hands, & search thoroughly for papers

of any sort." When he'd given that order I began to think he meant business. However, he was kept very busy writing & receiving people, &c., & I had not had my dinner; so I enquired if he wanted me any more, as I was about to dine when he sent for me. He apologized & said, We'll go on board your ship together, & off we went. On arriving in saloon Com'd'r McCalla called for the articles. Everything was going beautifully until he spotted "Mr. Solis," & then he opened out; told him he'd be shot should he attempt to get away & gave him a special sentry all to himself. Poor Solis! He couldn't go & see his aunt unless his sentry went with him, & this performance went on day & night for about 12 or 13 days. They turned the ship upside down, took my papers, measured the coals, & took stock generally. As far as the ship is concerned, she was on perfectly legitimate business, fetching refugees. Whether Mr. Solis chartered the ship for that purpose alone of course has to be proved, & we are now on our way to Savannah for that purpose with a prize crew & Lieut. Anderson in charge. All being well, I hope to arrive there the day after tomorrow. I hope the court will soon sit & not keep us messing about, as I'm in a hurry to get back to Kingston. It appears Admiral Sampson gave strict orders to "keep a good lookout for the 'Adula' and seize her (I send cutting from
359 American paper); whi I don't know unless they fancied we were trying to run the blockade. If they don't prove Mr. Solis guilty of trying to carry dispatches this experiment will be rather an expensive one. I cannot answer for him, but I know that we went for refugees only. One thing that made them rather surly was that a few weeks ago we went to Cienfuegos, which was supposed to be blockaded, but we went in & came out & not so much as a shadow of an American warship was to be seen. After being 70 miles from Cuba we were stopped by the "Yankee;" he fired a gun & we stopped; in fact, we always do when they fire a gun across our bows; we find it is by far the best thing to do, as the next one would be at us instead of ahead. A lieutenant came on board, looked at our papers, & we were allowed to proceed. Some days afterwards we found out at the time Gen'l Blanco's secretary was on board, going, I suppose, on some mission to Europe, so you can imagine our American friends were rather upset to think that they missed such a prize. We were quite ignorant of the fact, especially as he had assumed another name. I am writing this hoping that I shall be allowed to post my letters without let or hindrance: of course, they may keep a watch over us (they will over Mr. Solis, I hear) or require to see all letters before they are posted, & for that reason have put nothing down that can possibly offend them. Today we have been passing a part of the time away by practising target-shooting. I must tell you that all the "prize crew" are armed with Colt's revolvers, & very fine, useful things they are, & it was with one of those that we were firing with. Every day I grumble when I think of all my D. Telegraphs accumulating at home, & I should be so glad of them now. While we were at Guantanamo Admiral Cervera made his last attempt, & I might say first, to leave Santiago.
360 From what I hear, it was a terribly badly managed affair. The final result must have been the same, but they ought & should

have made a better show; in fact, they made no show at all. The fact of only one man being killed on the American side speaks for itself, &, strange to say, it was the same at Manilla. Now, dearest one, I am going to turn in. I will finish this on our arrival at Savannah & let you know should I hear anything of importance before closing this up. God bless you both.

SAVANNAH, *July 15th*, '98.

I arr'd here this morning shortly after daylight; & altho' I have headed my letter Savannah, we have not yet reached the town proper, for we are going thro' the same performance as we did at Tampa, but I was not caught this time, as I managed to keep all my things out of the "oven." Tomorrow the doctor expects to finish putting us thro'; & then we shall proceed. I rather fancy we shall be here some time, as we were hardly expected. I am hoping one of the firm will come down from New York & bring counsel with them, otherwise I must engage some one here, & I don't relish the responsibility; anyhow, before acting I shall wire New York & Kingston. I must post this directly I can on arrival at Savannah. Now, dearest ones, I will say good-bye for the present. Take all my fon-est love & lots of kisses.

From your loving son, BIRTIE.

Remember me to all. Trust every one is enjoying the best of health, & that you, dearest dad, are feeling much better & getting stronger. You must not worry or believe any of the reports you see in the papers. God bless & take care of you both.

R. W. Y.

The Sun, Wednesday, June 29, 1898.

THE MYSTERIOUS ADULA.

Suspicion that She Means to Carry Information to Cervera.

Special cable despatch to the Sun.

KINGSTON, JAMAICA, *June* 28—9.30 p. m.

The steamer Adula, which last week brought to this port Virgillo Lopez Chavis, subsecretary to Captain-General Blanco; Lopez Calle, an aid to Gen. Pando; Col. Gelpi, Blanco's chief of staff; and Ramon Pastor, a Spanish government agent with $300,000, sailed at 5 o'clock tonight ostensibly for Guantanamo. She cleared for Guantanamo, Santiago and Manzanillo. There is a mystery connected with her trip. In the first place, the Spaniards gave out while coming here, that the cash was for the purchase of provisions, but there is reason to believe that it was intended for other uses. The Spanish consul here has heretofore refused to clear any vessel for Santiago, but he cleared the Adula today without question, her charterer being José Solis, a Spaniard. She is not loaded with cargo, and it is not likely anyway, that the Atlas Company, her owners, would deliberately send the ship to a blockaded harbor

with cargo. The inference is that the Adula is going to some other place or that she will seek to enter Santiago or Guantanamo on some plausible pretext, possibly a plea that she intends to take on board refugees or British subjects.

The belief here among the few having knowledge of her ostensible destination is that her mission is a secret one to get in communication in some way with Admiral Cervera or Gen. Linares. Chavis is known to have said to friends ashore that when the last moment arrived, when resistance by the defenders of Santiago would be no longer useful, Cervera's squadron would dash out and do as much damage as possible to Admiral Sampson's fleet. On the other hand the prediction is made that the Spaniards are trying at this critical time to reach the Cuban supporters of the United States Army and buy them off, especially those west of Santiago, who would harass the Spanish retreat from Santiago to Havana.

Admiral Sampson has already said that if the Adula again tries to enter Cienfuegos she will be seized. What will happen if she presents herself at other ports on the south side of Cuba remains to be seen.

It had been given out that the Adula would sail at daylight tomorrow, but she may now be anywhere within eighty miles. It is said that she will try to induce the American naval officers to let her pass the blockade by offering to be searched throughout and promising to give them all the information she gathers at Santiago if they will allow her to pass.

[Written across the face:] Humbug. Do. R. W. Y.

361 *Clearance Paper of the "Adula" from Kingston, June* 28, 1898.

Port of Kingston, Jamaica. (Seal.)

These are to certify all whom it doth concern that R. W. Yeats, master or commander of the steamship Adula, burthen 372 tons, mounted with no guns, navigated with 35 men, British built, and bound for Guantanamo, having on board water ballast and stores for ship's use, hath here entered and cleared his said vessel according to law.

Given under my hand, at the custom-house, at the port of Kingston, in the island of Jamaica, this 28th day of June, one thousand eight hundred and ninety-eight.

VIDAL HALL,
For Collector of Customs.

#38.

362 *Notice of Appeal.*

United States District Court for the Southern District of Georgia.

THE UNITED STATES OF AMERICA, Libellants and Appellees,
versus
THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, &c.; THE Atlas Steamship Company, Limited, Claimant and Appellant.

Take notice that the claimant herein hereby appeals to the Supreme Court of the United States from the final decree made and entered herein condemning the said steamship "Adula" as lawful prize and from the order overruling the claimant's motion to take further proofs.

Dated Savannah, August 24th, 1898.

GARRARD, MELDRIM & NEWMAN,
Proctors for Claimant.

EVERETT P. WHEELER, *Advocate.*

To Marion Erwin, Esq., United States attorney.

To the clerk of the district court of the United States for the southern district of Georgia, eastern division.

Endorsement: United States district court for the southern district of Georgia. The United States of America, libellants & appellees, *vs.* The Steamship "Adula," her engines, boilers, &c., The Atlas Steamship Company, Limited. Notice of appeal. Filed August 25th, 1898. S. F. B. Gillespie, deputy clerk.

Marshal's Return.

I certify that on the 25th day of August, 1898, at Savannah, Ga. in my district, I have served a copy of the within notice of appeal on Wm. R. Leaken, Esq., ass't U. S. attorney, personally, and upon Marion Erwin, Esq., U. S. attorney. Service of same was effected by depositing a copy, under cover, to his usual address in the U. S. mail in this city.

Savannah, Ga., August 25, 1898.

JOHN M. BARNES,
U. S. Marshal,
By CHARLES J. WHITE, *Deputy.*

363 *Assignment of Errors.*

United States District Court, Southern District of Georgia.

THE UNITED STATES OF AMERICA, Libellants and Appellees,
versus
THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, &c.; THE Atlas Steamship Company, Limited, Claimant and Appellant.

The claimant hereby assigns errors in the rulings and proceedings of the district court herein as follows:

I. For that the court did not sustain the objection taken by the

claimant to the introduction of the testimony of Edwin A. Anderson, Ellenberg, and Gill, taken *de bene esse*.

II. For that the court erred in holding that the *onus probandi* of a neutral interest rested on the claimant.

III. For that the court erred in holding that for all the purposes of the voyage of the "Adula" she was a Spanish ship.

IV. For that the court erred in holding that the said steamship "Adula" was in the absolute control of a Spanish subject, or that he was using her to run the blockade.

V. For that the court erred in holding that there was any proof that Solis, the charterer, conveyed or attempted to covey any letters through the blockade.

VI. For that the court erred in holding that the ports of Guantanamo and Santiago were blockaded, either officially or otherwise, it appearing distinctly that both the said ports were not within the limits of the blockade declared by the proclamation of the President of June 27, 1898, and no official blockade of said ports had been declared prior to the commencement of the voyage of the "Adula" upon which she was captured.

VII. For that the court erred in holding that the port of Guantanamo was blockaded at all, it appearing distinctly that said port was in the possession of the American forces and was not under blockade.

364 VIII. For that the court erred in holding that the port of Manzanillo was blockaded at all, there being no proof whatever that said port ever was in fact blockaded.

IX. For that the court erred in holding that the "Adula" was ever placed at the disposal of a Spanish subject to communicate if he could with the Spaniards and Spanish subjects by crossing the American lines by means of access to a blockaded port.

X. For that the court erred in holding that the claimant had any notice at the time the "Adula" sailed from Kingston that a blockade existed at any of the ports for which the voyage was commenced.

XI. For that the court erred in holding that there was any purpose in the mind of Solis, the charterer, or the claimant to enter a Spanish port whether it was blockaded or not.

XII. For that the court erred in holding that the "Adula" sailed with intent to enter a blockaded port or to run the blockade.

XIII. For that the court erred in holding that the third voyage of the "Adula" to Cienfuegos in June, 1898, was unlawful, or that in the course of said voyage she ran any blockade, whereas it distinctly appeared that said port was not in fact blockaded at the time and the "Adula," as a neutral ship, had, therefore, an absolute right to enter said port.

XIV. In that the court considered as evidence against the claimant a letter written by Captain Yeates to his parents after the capture and after the ship had been sent in for adjudication.

XV. For that the court erred in considering that the statement in said letter furnished any evidence that the "Adula" had ever carried out the private secretary of General Blanco.

XVI. For that the court erred in holding that the "Adula" was warned off again and again by the American authorities, or that she persisted in spite of such warning in her ventures, or that she ever evinced a total disregard of the blockade.

XVII. For that the court erred in holding that there was any intention on the part of said Solis to communicate with the garrison of Guantanamo.

XVIII. For that the court erred in holding that the official passport given him by the Spanish authorities was any
365 evidence authorizing the condemnation of the "Adula," it being plain from the evidence that there was no intention to use such passport except with the consent of the naval authorities of the United States and for the purpose of co-operating with the Government of the United States in their declared purpose to allow the removal of refugees and non-combatants from the island of Cuba.

XIX. For that the court erred in holding that there was any evidence tending to prove the destruction of said passport and in refusing to allow the testimony of Commander McCalla to be taken as to the delivery to him of said passport.

XX. In that the court erred in holding that the production of a certified copy of this passport would not throw any light upon the controversy and in refusing to permit the introduction of such a certified copy.

XXI. For that the court erred in holding that there was any presum-tive evidence that said Solis carried any official communications with him.

XXII. For that the court erred in holding that the "Adula" was engaged in the Spanish trade in disregard of the blockade.

XXIII. For that the court erred in holding that the additional evidence offered on the behalf of the claimant, taken in connection with that already before the court, would not change the result.

XXIV. For that the court erred in holding that the evidence taken *in preparatorio* is not susceptible of any satisfactory explanation.

XXV. For that the court erred in holding that upon comparing the proofs proposed to be brought forward and with that already in the cause the legal effect of the facts before the court could not be varied by the circumstances of explanation offered on the motion to take further proofs.

XXVI. For that the court erred in refusing to allow further proofs to be taken in the case.

XXVII. For that the court erred in holding that a voyage to either or all of the ports of Guantanamo, Santiago, or Manzanillo for the sole purpose of removing refugees and non-combatants,
366 under the direction and with the consent of the naval authorities of the United States having possession of said ports or controlling the entrance- thereto, was unlawful.

XXVIII. For that the court erred in holding that the carrying of letters or other papers by said Solis without the knowledge or consent of the claimant, and in violation of the agreement for the

charter of said steamship, subjected the said steamship to capture and condemnation.

XXIX. For that the court erred in disregarding entirely the joint resolutions of Congress approved April 20, 1898, for the recognition of the independence of the people of Cuba and for other purposes, and the act of Congress approved May 18, 1898, to provide assistance to the inhabitants of Cuba, and also the declared policy of the United States Government from the beginning of the war with Spain and prior thereto to provide assistance and relief for the suffering non-combatants in said island, and applied to an expedition undertaken for their relief and release decisions which could only be applicable to trading with the enemy.

XXX. For that the court erred in holding that there was any evidence that the said Solis had ever been engaged in blockade-running, or in carrying provisions or supplies to blockaded ports, or in taking refugees or non-combatants from blockaded ports.

XXXI. For that the court erred in holding that under the circumstances of this case an approach to Guantanamo bay for the purpose of asking permission from the United States naval authorities to enter the same subjected the Adula to capture and forfeiture.

XXXII. For that the court erred in holding that there was any evidence whatever that the Adula or any person on board of her had any intention to run a blockade upon the voyage on which she was captured, or made any attempt to run any blockade at Guantanamo bay.

XXXIII. For that the court failed to decide that the voyage of the Adula was a friendly voyage, prosecuted solely to mitigate the horrors of war, by the removal of non-combatants from the scene of hostilities, for which the consent of both contending parties was sought, and which was under the protection of the laws of war to the same extent as the voyage of a cartel ship.

367 XXXIV. For that the court decided that the said Solis was an enemy of the United States, although after diligent enquiry the naval officers of the United States had found no cause to detain him and he was allowed by them to depart and was not held as prisoner of war.

XXXV. For that the court disregarded the undisputed evidence that there was no intent to run any blockade, and especially the proof that express notice of the voyage and its object and of the charter was given to the United States consul at Jamaica that the "Adula" approached the Cuban coast and anchored and whistled for a pilot, and that the naval forces of the United States at Santiago and Guantanamo were so overwhelming that any attempt to run a blockade maintained by them would have been ridiculous.

XXXVI. For that the court erred in entering a final decree condemning the said steamship "Adula" as lawful prize of war.

XXXVII. For that the court erred in refusing to enter a decree in favor of the claimant that said steamship, her engines, &c., be restored to it, with costs, and that on account of the absence of prob-

able cause of capture it did not award damages against the captors and appoint commissioners to assess the damages.

Dated Savannah, Georgia, August 29, 1898.

P. W. MELDRIM,
Proctor for Appellant & Claimant.

EVERETT P. WHEELER, *Advocate.*

Endorsement: United States district court. The United States of America, libellants and appellees, *vs.* The Steamship "Adula," her engines, boilers, etc.; The Atlas Steamship Company, Limited, claimant & appellant. Assignment of errors. Filed in clerk's office Sept. 3, 1898. H. H. King, clerk.

368 *Order for Marshal to Remove and Sell Vessel in New York.*

Eastern Division, Southern District of Georgia.

In re the "ADULA."

It appearing to the court that the S. S. "Adula" has been heretofore, to wit, on the 15th day of August, 1898, by decree of this court, ordered to be sold as prize of war; that the upset price was fixed at $55,000, and that she was duly exposed for sale, conformably to law, at Savannah, in said district, and that no bid was offered at said attempted sale, it is therefore by the court—

Ordered that the marshal of said district do employ a competent and experienced navigator and a sufficient crew for said steamship, and also lay in a sufficiency of supplies and transfer her to the harbor of New York, and that he do pay all necessary expenses for such voyage and transfer, including adequate marine insurance, which he is hereby directed to effect.

Ordered further that on the arrival of said vessel in New York harbor that he shall advertise the same for sale in the New York Herald and one other paper in which advertisements relative to shipping are usually published, said paper to be selected by him, and said advertisements to be for ten days, and after the expiration of said period and after having complied with the provisions of section # 4628 of the Revised Statutes, the said marshal is directed to sell at public outcry, at a time and place in New York city to be designated in said advertisements, said S. S. "Adula," her tackle, apparel, furniture, and engines, &c., to the highest and best bidder, accepting no bid, however, for a sum less than fifty-five thousand dollars.

Sept. 5, 1898.

EMORY SPEER, *Judge.*

Endorsement: District court of the U. S., eastern division, southern district of Georgia. The United States of America *vs.* Steamship "Adula," etc. Order for marshal to remove and sell the vessel in New York. Filed Sept. 5th, 1898. S. F. B. Gillespie, deputy clerk.

369 *Petition for Appeal, and Order Allowing.*

United States District Court for the Southern District of Georgia, Eastern Division.

THE UNITED STATES OF AMERICA, Libellants and Appellees,
versus
THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, &c.; THE Atlas Steamship Company, Limited, Claimant and Appellant.

To the Supreme Court of the United States:

The petition of the Atlas Steamship Company, Limited, respectfully shows to this court:

I. On or about July 21, 1898, the libellants filed a libel in the United States district court for the southern district of Georgia, eastern division, against The Steamship "Adula," her engines, boilers, cargo, etc., praying, for the reasons set forth in said libel, that the said steamship, her engines, boilers, &c., and her cargo might be condemned, forfeited, and sold as prize of war.

II. That thereafter your petitioner appeared in said suit, and on or about July 27, 1898, having made due claim to the said steamship, her engines, boilers, &c., and also to about eleven tons of coal, which is erroneously described in said libel as cargo, filed an answer in this cause setting forth that there was no cargo on board said steamship and praying that said libel might be dismissed for the causes therein set forth; that depositions *in preparatorio* were taken before the prize commissioners in said district.

III. Thereafter and on or about the 28th day of July, 1898, the said cause came on to be heard upon the said depositions and upon the papers found in said steamship at the time of her capture, and such proceedings were thereupon had that on said day the Honorable Emory Speer, the judge of said court, announced his decision that the said steamship, her engines, &c., and the said coal should be condemned as prize of war, and thereupon the claimant moved the court to order further proof and permit the claimant to take further proof respecting the issues in the cause, and the learned judge thereupon directed that the hearing for said motion be set down for the 9th day of August, 1898, and that the entry of the decree in said cause be without prejudice to said motion.

370 IV. Thereupon the judge of said court pronounced in favor of the libellants and caused a decree to be thereafter entered condemning the said steamship "Adula," her engines, boilers, &c., and her coal, as lawful prize of war, and adjudging that she be sold and the proceeds distributed according to law.

V. Thereafter, by leave of the court first *heard* and obtained, your petitioner filed in the said district court affidavits of Robert Gemmell and W. Peploe Forwood, with certain exhibits thereto annexed, and made a motion thereon for leave to take further proofs in said cause, and on or about August 8, 1898, the libellant filed an answer to said motion, and the said motion was heard before the judge of said court,

who afterwards, and on or about August 15, 1898, made an order denying said motion, which order was thereupon entered in said district court, and which order directed that the papers upon the said motion to take further proofs and the said order be made a part of the record herein for use in case of an appeal.

VI. And your petitioner is advised and insists that said final decree is erroneous in that it decrees that said steamship is lawful prize of war, and should be condemned and forfeited and sold, and the proceeds distributed according to law, and in that it does not dismiss the libel and order restitution of the said steamer, &c., to the claimant, and in that it did not on account of the absence of probable cause of capture award damages against the captors and appoint commissioners to assess the damages.

VII. Your petitioner is also advised and insists that said order denying the motion to take further proof is erroneous, in that it decrees that the evidence taken *in preparatorio*, as it stands, is not susceptible of any satisfactory explanation, and that upon comparing the proof proposed to be brought forward with that already in the cause the legal effect of the facts before the court cannot be varied by the circumstances of explanation offered on said motion.

371 VIII. For these and other reasons your petitioner appeals from the said order to the Supreme Court of the United States, and on said appeal intends to seek a new decision on the law and on the facts upon the pleadings and proofs in said district court, and the affidavits and exhibits upon the said motion, and upon new pleadings and proofs to be introduced in this court, and to that end prays that the records and proceedings of said court may be returned to the Supreme Court of the United States, and that the said decree may be reversed and the libel be dismissed with costs in the district court and in this court to your petitioner, and that restitution of the said steamer, &c., or her value, be decreed to the claimant, and that on account of the absence of probable cause of capture damages be awarded against the captors, and commissioners appointed to assess the damages.

Dated Savannah, Georgia, August 26, 1898.

GARRARD, MELDRIM & NEWMAN,
Proctors for Claimant & Appellant.

The foregoing appeal is allowed. October 26, 1898.

EMORY SPEER, *Judge.*

Endorsement: United States district court, eastern division of the southern district of Georgia. United States of America, libellant- & appellees, *versus* Steamship "Adula," her engines, boilers, etc.; The Atlas Steamship Company, Limited, claimant and appellant. Petition of appeal, and order allowing. Filed in office Oct. 31, 1898. H. H. King, clerk.

372 *Bond on Appeal.*

United States District Court for the Southern District of Georgia, Eastern Division.

THE UNITED STATES OF AMERICA, Libellants and Appellees,
versus
STEAMSHIP "ADULA," HER ENGINES, BOILERS, &C.; THE ATLAS Steamship Company, Limited, Claimant and Appellant.

Know all men by these presents that we, the Atlas Steamship Company, Limited, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto The United States of America, appellees, in the just and full sum of two hundred and fifty ($250) dollars, to be paid to the said The United States of America; to which payment, well and truly to be made, we bind ourselves, our successors or assigns, by these presents.

Sealed with our seals and dated this 26th day of October, in the year eighteen hundred and ninety-eight (1898).

Whereas lately, at the United States district court for the southern district of Georgia, eastern division, in a suit depending in said court between The United States of America, libellant, and The Steamship "Adula," her engines, boilers, &c., The Atlas Steamship Company (Limited), claimant, a decree was rendered condemning the said steamship "Adula," her engines, boilers, &c., and her coal as lawful prize of war, and adjudging that she be sold and the proceeds distributed according to law, and the said The Atlas Steamship Company (Limited) having obtained an appeal, which has been filed in the clerk's office of said court, to reverse the decree in the aforesaid suit, and a citation directed to the said The United States of America, citing and admonishing the said appellees to be and appear before the Supreme Court of the United States, at the city of Washington, on the twenty-second (22nd) day of November next:

Now, the condition of the above obligation is such that if the said The Atlas Steamship Company (Limited) shall prosecute said appeal to effect and answer damages and costs if it fails to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

373 THE ATLAS STEAMSHIP COMPANY
(LIMITED),
By GARRARD, MELDRIM & NEWMAN, *Proctors.*
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By EMILE NEWMAN, *Its Att'y-in-fact.*

Attest:
[Seal of F. & D. Co.]
JOHN R. COWAN,
For Resident Manager.

Sealed and delivered in the presence of—
CHAS. H. KING,
Notary Public, Chatham Co., Ga. [SEAL.]

Approved by—
EMORY SPEER, *Judge.*

Endorsement: # 205. In the United States district court for the southern district of Georgia, eastern division. The United States of America, libellants and appellees, *versus* Steamship "Adula," her engines, boilers, etc.; The Atlas Steamship Company, Limited, claimant and appellant. Bond on appeal. Filed in office Oct. 31, 1898. H. H. King, clerk. Garrard, Meldrim & Newman, proctors for claimant and appellant.

374 *Citation.*

United States District Court for the Southern District of Georgia, Eastern Division.

THE UNITED STATES OF AMERICA, Libellants and Appellees,
versus
STEAMSHIP "ADULA," HER ENGINES, BOILERS, &C.; THE ATLAS Steamship Company (Limited), Claimant and Appellant.

To the United States of America, Greeting:

Whereas the Atlas Steamship Company (Limited) has lately appealed to the Supreme Court of the United States from a decree lately rendered in the district court of the United States for the southern district of Georgia, eastern division, made in favor of you, the said The United States of America, condemning the said steamship "Adula," her engines, boilers, &c., and her coal as lawful prize of war and adjudging that she be sold and the proceeds distributed according to law:

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the twenty-second (22nd) day of November next, to show cause, if any there be, why the decree rendered against said claimant and appellant should not be corrected and to do and receive what may pertain to justice to be done in the premises.

Witness the Honorable Merville W. Fuller, Chief Justice of the United States, this 26th day of October, in the year eighteen hundred and ninety-eight (1898).

EMORY SPEER, *Judge.*

Endorsement: The United States of America, libellants & appellees, *vs.* Steamship "Adula." her engines, boilers, etc.; The Atlas Steamship Co., Limited, claimant & appellant. Citation. Filed in office this Oct. 31st, 1898. H. H. King, clerk. Garrard, Meldrim & Newman, proctors for claimant & appellant.

Acknowledgement of Service.

Due & legal service & notice of the above citation is hereby acknowledged; further service waived.

Oct. 29, 1898.

MARION ERWIN,
U. S. Attorney for Southern District of Georgia.

375 *Order to Accept Stipulation for Value.*

In the District Court of the United States for the Eastern Division, Southern District of Georgia.

THE UNITED STATES *versus* STEAMSHIP "ADULA." } Libel *in Rem.* Prize.

It appearing to the court that the said prize steamship Adula, etc., was, after due advertisement, offered for sale at a minimum bid of $55,000.00, once at Savannah and once at New York city, and that on neither occasion was there any bid for said property;

And said Atlas Steamship Company (Limited), claimant, having tendered to the court a stipulation for value for the release of said vessel, her engines, boilers, tackle, apparel, and furniture, in the sum of fifty thousand dollars, with the Fidelity and Deposit Company of Maryland as surety, and it being represented to the court by the United States attorney that in the opinion of the Attorney General, the naval prize commissioner, and said United States attorney it is to the best interest of all concerned that said stipulation for value be accepted and said vessel be delivered up and released to the said claimant—

It is therefore ordered that said stipulation for value be accepted, and the marshal is directed forwith to deliver said steamship Adula, her engines, boilers, tackle, apparel, and furniture, to the said claimant.

November 11, 1898.

EMORY SPEER, *U. S. Judge.*

Order to accept stipulation for value filed in office Nov. 14, 1898.

S. F. B. GILLESPIE,
Deputy Clerk.

376 *Stipulation for Value on Release.*

In the District Court of the United States, Southern District of Georgia, Eastern Division.

Whereas a libel was filed on the 21st day of July, 1898, by The United States of America, libellant, against The Steamship "Adula," her engines, boilers, tackle, apparel, and furniture, seeking to have said vessel forfeited and sold as prize of war and proceeds to be distributed according to law, on which process of attachment was issued, and said vessel was seized by the marshal of said district, and the Atlas Steamship Company (Limited), on the 26th day of July, 1898, filed its claim to said steamship as the owner thereof;

And whereas a decree was rendered in said cause condemning said vessel as lawful prize of war, and by a further decree, on the 15th day of August, 1898, by said court the said vessel was ordered to be sold and now remains in the custody of said marshal;

And whereas an appeal has been allowed from said decree to the Supreme Court of the United States, and pending said appeal the said owner and claimant desires the possession of said vessel;

And whereas it has been agreed by and between the proctors in said cause that a stipulation for value shall be given in the sum of fifty thousand dollars ($50,000), and the parties hereto hereby consenting and agreeing that in case of fault or contumacy on the part of the claimant or its surety execution for the above agreed amount may issue against their property:

Now, therefore the condition of this stipulation is such that if the claimant herein, The Atlas Steamship Company (Limited), and Fidelity and Deposit Company of Maryland, a corporation duly organized under the laws of the State of Maryland, the stipulators undersigned, shall abide by all orders of the court, interlocutory or final, in said cause, and pay the amount of money awarded by the final decree rendered by this court or by the appellate court, then this stipulation to be void; otherwise to remain in force and virtue.

377 THE ATLAS STEAMSHIP COMPANY,
LIMITED, [L. S.]
By GARRARD, MELDRIM & NEWMAN, *Proctors.*
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By EMILE NEWMAN, *Its Attorney-in-fact.*
Attest: JORDAN F. BROOKS,
[SEAL.] *Agent Fidelity & Deposit Company of Md. and Resident Manager at Savannah, Ga.*

Taken and acknowledged before me this ninth day of November, 1898.

CECIL MORGAN,
[SEAL OF COURT.] *Deputy Clerk, U. S. Circuit Court, So. Dist. of Ga.*

Approved and ordered filed Nov. 11, 1898.
EMORY SPEER, *U. S. Judge.*

Stipulation for value filed in clerk's office November 14, 1898.
S. F. B. GILLESPIE,
Deputy Clerk.

378 *Order Extending Time for Sending Up Record on Appeal.*

In the District Court of the United States for the Eastern Division, Southern District of Georgia.

THE UNITED STATES
vs.
STEAMSHIP "ADULA," ETC. } Libel *in rem.* Prize.

On motion of proctors for claimant in the above-stated cause, it is ordered that the time for sending up the record on appeal to the

Supreme Court on the appeal of said claimant be extended fifteen days from this date.

November 19, 1898.

EMORY SPEER, *U. S. Judge.*

Endorsement: United States *vs.* Steamship "Adula," etc. Libel *in rem.* Prize. Order extending time for sending up record on appeal. Filed November 19, 1898. L. M. Erwir, deputy clerk. Service acknowledged for the United States. William R. Leaken, ass't U. S. attorney, November 21, 1898.

379 *Clerk's Certificate.*

In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, TACKLE, Apparel, etc., and The Atlas Steamship Company, Limited, Claimants and Appellants,
versus
THE UNITED STATES OF AMERICA, Libellant and Appellee.

Libel *in rem.* Prize.

I, H. H. King, clerk of the district court of the United States for the southern district of Georgia, do hereby certify that the 378 foregoing pages, numbered from number one to number 378, annexed to this certificate, is a full, true, and complete transcript of the record of the district court, assignment of errors, testimony, and other proceedings as directed by law to be made, with the agreements of counsel in the cause above stated of The Steamship "Adula," her engines, boilers, tackle, etc., and The Atlas Steamship Company, Limited, claimants and appellants, *versus* The United States of America, libellant and appellee, which case was lately pending in the district court of the United States for the eastern division of the southern district of Georgia and appealed by the Steamship "Adula" and the Atlas Steamship Company, Limited, to the Supreme Court of the United States, as the same remains of file and of record in my office.

Seal U. S. District Court, Southern District of Georgia.

In witness whereof I have hereunto set my hand and affixed the seal of the said district court of the United States, at Savannah, Georgia, this thirtieth day of November, in the year of our Lord one thousand eight hundred and ninety-eight (1898).

H. H. KING, *Clerk.*

Endorsed on cover: File No. 17,213. S. Georgia D. C. U. S. Term No., 628. The Steamship "Adula," her engines, boilers, tackle, apparel, &c.; The Atlas Steamship Company (Limited), claimant, appellant, *vs.* The United States. Filed December 9th, 1898.

No. 167
Brief of Wheeler
167

OCT 26 1899
Clerk.

Filed Oct. 25, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

The Steamship ADULA, her Engines, &c., THE ATLAS STEAMSHIP COMPANY (Limited),

Claimant-Appellant,

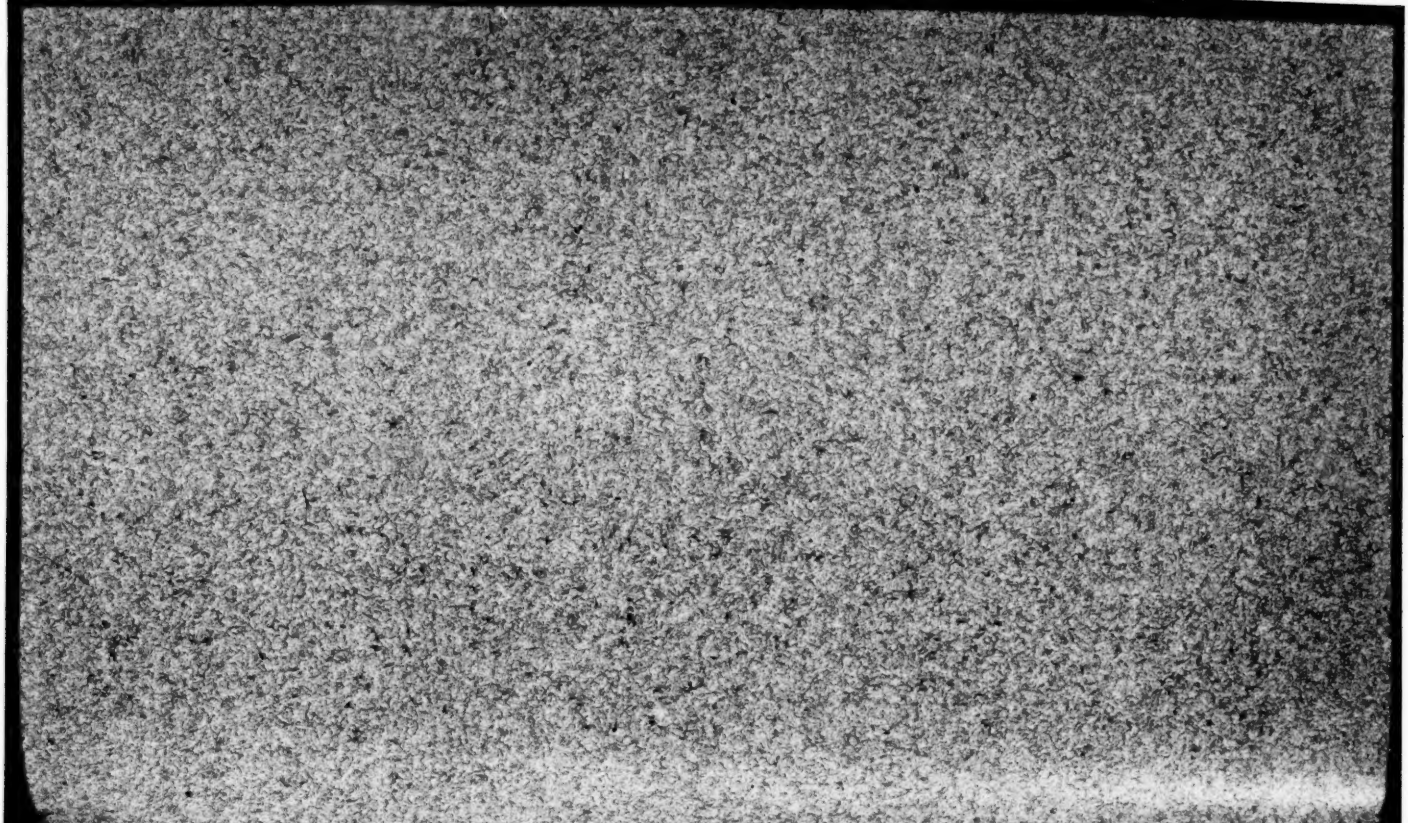
vs.

THE UNITED STATES.

Appeal from the District Court of the United States for the Southern District of Georgia.

BRIEF FOR APPELLANT.

EVERETT P. WHEELER,
Of Counsel.



INDEX.

PAGE.

STATEMENT 1
Assignment of Errors 9

POINTS.

1. Guantanamo Bay not Blockaded 11
2. Relation of People of Cuba to United States 17
3. Cartel Ships and Errands of Necessity and Humanity 21
4. Implied License 23
5. Effect Declaration of Paris 24
6. Intention to run the Blockade 31
7. Position of the United States Consul. 34
8. The Position of Solis with Reference to the Voyage 36
9. Additional Testimony 43
10. The Course of the *Adula* on her Last Voyage 45
11. Previous Voyages 48
12. Spoliation Papers 52
13. Summary 54
14. Damages 55

APPENDIX.

Summary 59
I. Conditions in Cuba which led to the Spanish War and Object of that War. 61
II. Adhesion to Declaration of Paris ... 64
III. Possession of Guantanamo Bay ... 65
IV. The Refugees from Santiago, their Sufferings, and the difficulty experienced by our Army in giving them Food 68

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1899.

THE STEAMSHIP "ADULA" HER engines, &c., THE ATLAS STEAMSHIP COMPANY, Limited,
Claimant-Appellant,

against

THE UNITED STATES.

BRIEF FOR APPELLANT.

Statement.

This is an appeal from a decree of the District Court of the United States for the Southern District of Georgia, condemning as prize of war the British Steamship *Adula*, and denying a motion made by the claimant for leave to take further proofs (pp. 238, 243, 244).

The case below is reported, 89 Fed. Rep. 341.

The *Adula* belonged to the Atlas Steamship Company, a British Corporation, and in accordance with the English practice, was registered in the name of Sir William Bowers Forwood its managing Director (pp. 25, 40). The register (No. 36, p. 83) is not printed in the record.

The *Adula* was captured by the United States

steamer *Marblehead* while the former was at anchor off the port of Guantanamo, June 29, 1898. She was taken into Savannah for adjudication. The libel was filed July 21, 1898, and process was returnable August 1, 1898 (p. 4). The case was, however, heard upon the proofs *in preparatorio* before the return of process, the Atlas Steamship Company, the claimant of the ship, having meanwhile filed its answer. Before the decree the claimant made its motion for leave to take further proofs, and the Court granted a rule *nisi* setting the hearing of the motion down for August 9, 1898, giving the claimant leave to serve such affidavits and other papers as it might desire to read upon the motion, and directing that the entry of the decree be without prejudice to said motion. This was July 28, 1898. On the same day the decree of condemnation was rendered (p. 24). The claimant served for use upon the motion to take further proofs the affidavit of Robert Gemmell, the New York resident agent of the claimant (pp. 25 to 29). Annexed to this affidavit was a statement which Gemmell had received from W. P. Forwood, the resident agent of the company in Jamaica (pp. 30-35). There was no time to obtain an affidavit to the facts stated in this statement. In reference to this, Gemmell's affidavit stated that he knew Forwood, was satisfied from personal acquaintance "that his statements were in every particular entirely reliable, and that all the matters stated thereon can be proved by him and by the other witnesses mentioned in said statement" (p. 25). There was also served an affidavit made by W. P. Forwood (pp. 35, 36), and drawn in Jamaica (p. 26). Annexed to the latter affidavit are copies of all the charters that had been made for the *Adula* upon any of her voyages from Jamaica to Cuba (pp. 35 to 39).

The United States filed an answer to the motion

to take further proofs (pp. 40 to 48). This answer is in effect a demurrer, though argumentative. It does not deny that evidence can be given of the facts stated in the moving affidavits, but argues with some elaboration that these facts are irrelevant, or that the evidence ought not to be received.

Upon the motion the United States also offered to read the depositions of Lieutenant Anderson and Ellenberg and Gill, members of the prize crew, taken *de bene esse* (p. 49). To the introduction of these depositions the claimant objected (p. 49).

Upon this motion the Court made an order that "for the purposes of the hearing upon this motion the Court has considered the allegations in said statement of W. P. Forwood, attached to Gemmell's affidavit, as if said Forwood had testified thereto on deposition regularly taken, and giving due weight to the same in connection with the other evidence in the case, and the Court being of the opinion that the evidence as it stands is not susceptible of any satisfactory explanation, and, on comparing the proof proposed to be brought forward with that already in the cause, the Court being of the opinion that the legal effect of the facts before the Court cannot be varied by the circumstances of explanation offered on said motion, the motion was therefore denied" (p. 50).

The Court directed that the papers used on the hearing and the order itself should be filed as part of the record for use in case of an appeal (p. 50). This order was made August 15, 1898. The position of the case is therefore this: The United States opposed the motion of the claimant for further proofs. The counsel for the captors rested their claim upon the legal conclusion alleged to follow from the undisputed facts in the case. It was, in effect, not denied that the circumstances of explanation offered by the claimant in fact existed. The case was presented by counsel and decided by the Court, distinctly on the ground that as matter

of law the captors were entitled to a decree of condemnation upon the undisputed facts. These are as follows:

Solis was a Cuban, born in the neighborhood of Havana. He resided at Manzanillo, and had been French consular agent there. The *Adula* was a British steamship belonging to the Atlas Steamship Company, a British corporation engaged in the business of a common carrier of mails, passengers and freight between New York and various points in the West Indies. The *Adula* ran in connection with the steamers between New York and Kingston, touching at various points on the coast of Jamaica (pp. 132, 139). During the war with Spain she had made four voyages to Cuba (pp. 30–33). Three of these were to Cienfuegos, and one to Santiago. On the first two voyages to Cienfuegos she was chartered with the full consent (and, indeed, on the first voyage, at the instance) of the United States, for bringing off from Cuba, American and British citizens who found themselves there at the outbreak of hostilities. This port was blockaded at the time, and she entered with the full consent of the United States and Spanish authorities. Between the first and second voyages to Cienfuegos she made a voyage to Santiago, which was not at the time blockaded. This was for the purpose of bringing off refugees. She afterwards made a third voyage to Cienfuegos, the blockade of which had been interrupted by reason of the dispatch of the United States vessels there to Santiago, to encounter Admiral Cervera's squadron.* After leaving Cienfuegos, she was, however, warned that it was the intention of the United States Government to continue the blockade of that port, and she did not return to it. On this voyage she did not find as many passengers for Jamaica as was

* Morris, History of War with Spain, p. 188.

expected, and as the people at Cienfuegos were in an absolute state of destitution for want of food, the charterer landed there the provisions which had been shipped for the passengers, and which were not required for that purpose (p. 33).

June 28, 1898, a charter party was executed between W. P. Forwood, the agent of the Atlas Company at Jamaica, and Solis, by which the *Adula* was put at the disposal of the charterer—

"For the conveyance of passengers from Cuban ports hereinafter to be named, to Kingston. The ports that the vessel is to go to are Manzanillo, Santiago and Guantanamo; but it is distinctly understood and agreed by the parties aforesaid that it shall not be deemed a breach of this agreement should the steamer be prevented from entering any of those ports from causes beyond the control of the company, but that should she be able to enter one or all of them, she shall embark the passengers that the charterer shall engage for her and proceed on her voyage. If she is not permitted to enter either Manzanillo, Santiago or Guantanamo, the vessel is to return to Kingston and the voyage shall be considered completed, and the charter money hereinafter referred to, earned without any deductions. * * * The charterer is to provide a good and efficient government pilot to conduct the ship safely into the ports which have been named. Should she be permitted to enter them the charterer guarantees that the proper and efficient clearances shall be obtained for each port, so that the ship shall not be subjected to any fines for breach of regulations. * * *

The company will give the option to the charterer for another voyage similar to this on similar terms, providing the charterer gives the company twenty-four hours' notice after the arrival of the steamer at Kingston" (Exhibit D, pp. 38, 39).

A duplicate, which was taken from the steamer when she was captured, is at pp. 187, 188.

Accompanying this charter were written instructions from Captain W. P. Forwood to Captain

Yeats, the commander of the *Adula*. These were taken from the ship when she was captured (pp. 186, 187). These instructions are so important that we print them in full:

ATLAS STEAMSHIP COMPANY,

JAMAICA AGENCY, KINGSTON, June 28th, 1898.

CAPTAIN YEATES,

S. S. *Adula*,

Dear Sir.—I enclose herein a copy of the agreement under which your vessel is proceeding on, and on board the ship will be the charterer to whom I now introduce you, Mr. Jose R. Solis, and I ask you to show him every attention on the voyage.

You will see by a perusal of the agreement that you are on a voyage wholly and solely for the conveyance of refugees from the ports named to Kingston.

On your arrival at Guantanamo, to which port you will proceed direct, you will find, no doubt, American warships off the port. You will, when signalled to, immediately stop and communicate to the commanding officer the voyage that you are on, and, in fact, you can show him these sailing orders, and I do not think that the commanding officer will make any trouble whatever to your continuing the voyage into the port.

You must be most careful on your arrival there not to interfere or in any way make any observations or sketches of anything that you may see or hear of, but adhere strictly to the duties of your ship.

At Guantanamo it is likely there may be some difficulty in obtaining a pilot, and if the Commanding Officer gives you permission to proceed it is just possible that he may be able to tell you where you can obtain the services of a pilot to go in.

From Guantanamo you will proceed to off Santiago. Here you will meet the other fleet and carry the same instructions out with them as I have mentioned to you in reference to Guantanamo. The charterer is telegraphing at once to Santiago for a pilot to come off to meet the ship, if

permission is granted, to pilot your ship into the port. From Santiago you will proceed to Manzanillo and from thence back to Kingston. The charterer, Mr. Solis, may order you direct from Guantanamo to Kingston, or from Santiago to Kingston, and in such a case you will follow out his orders, which he will give you in writing. He has the option of going to the three ports, but it may be convenient for him to go to only one or even two. The boat's crew that is mentioned in the appendix of this agreement you will provide, but it will be necessary for you to have the ensign in the stern, so as to show your nationality.

You will not allow any provisions of any sort to leave your ship at any of the ports or to do anything that is contrary to the laws of the country, or that could be interpreted as a breach of faith in being allowed to pass the blockade and enter the ports, and I must ask you not to permit any of your crew to land at any of the ports, and only yourself if necessary to visit the British Consul. Wishing you a pleasant voyage,

I remain, dear sirs,
Yours faithfully,
W. Peploe Forwood,
Gen. Agt. Jca.

Please cable your arrival and departure from each port.

W. P. F.

The *Adula* sailed on the 28th of June. Before she sailed Solis asked from the United States Consul at Kingston, Mr. Dent, a permit to enter the ports of Guantanamo, Santiago, and Manzanillo. This Mr. Dent refused to give, on the ground that he had no authority to give it without special instructions from Washington. A similar statement was made by Dent to W. P. Forwood. Much importance was attached by the Court below to the conversations between Dent and Forwood, and between Dent and Solis, and they will be considered in detail under a separate point. At the time the *Adula* sailed, no official blockade of either Guan-

tanamo or Santiago had ever been declared. The proclamations on this subject are contained at pages 211 and 212 of the Record. The first of these is dated April 22, 1898. The only port on the south coast of Cuba declared blockaded is Cienfuegos (p. 211). A second proclamation is dated June 27, 1898, and declares a blockade "of all the ports on the south coast of Cuba from Cape Frances to Cape Cruz." Guantanamo and Santiago are not included within these limits, as will appear from the annexed map. Both of them are east of Cape Cruz.

It is a part of the history of the war that the harbor of Guantanamo had been for some time in the absolute and exclusive possession of the United States naval forces, with entrenchments on the shore which were occupied by marines from the fleet (p. 42, paragraph g; Appendix to brief, pp. 65-67).

It was occupied, in order to provide a convenient coaling and supply harbor and to facilitate communication with the Cubans (*Ibid*, p. 65, 66).

A large United States squadron had been stationed off the entrance to the harbor of Santiago, ready to encounter Admiral Cervera's fleet.

It seems probable that the real reason why the *Adula* was seized is that stated by the Consul to W. P. Forwood (p. 34).

> Forwood said to the Consul: "Oh, Dent, let me show you the Captain's instructions. He has got orders to go to the fleet there and ask their permission to take some refugees." "Well," he said, "I don't know, but they will be watching for her, and I think that Senor Solis is a Spanish agent, carrying $300,000 in gold to buy over the rebels in the American camp." I told him that I had inquired about the man, and that it was one of the usual Kingston yarns."

When the ship was seized careful search was made. The United States authorities took posses-

sion of all her papers. They found a number of letters on board that had been brought by Captain Walker, who had commanded the *Adula* on previous voyages from Cuba to Jamaica, and also some letters that Solis, without the knowledge of the owner of the *Adula*, was taking to Cuba. None of these letters are of an incriminating character, and most of them are not printed in the Record. The substance of them and the facts about them are stated in Gemmel's affidavit, p. 29, paragraphs i, j, and k. At page 213 a stipulation to the following effect is contained in the record:

"It is agreed that the following letters, numbered (here follow the numbers), relate solely to commercial and domestic matters, and that they be abridged as follows, the same being a correct statement of the correspondence found on board the *Adula*, but not copied out in full, and that the same may be used in evidence for either party in lieu of sending up either the originals or copies."

The suspicion that Dent had of Solis was not verified by the investigation. Nothing whatever was discovered on the *Adula* that tended to throw the slightest doubt upon the *bona fides* of his errand, or to suggest that he had any intention of communicating in any way with the Spanish authorities.

Assignment of Errors.

The assignment of errors is at pages 238 to 241 of the Record. The following are the most material, beside the general assignments, usual in admiralty cases:

VI.—For that the Court erred in holding that the ports of Guantanamo and Santiago were blockaded either officially or otherwise, it appearing distinctly that both the said ports were not within the limits of the blockade declared by the proclamation of the President of June 27, 1898, and no

official blockade of said ports had been declared prior to the commencement of the voyage of the *Adula* upon which she was captured.

VII.—For that the Court erred in holding that the port of Guantanamo was blockaded at all, it appearing distinctly that said port was in the possession of the American forces and was not under blockade.

XI.—For that the Court erred in holding that there was any purpose in the mind of Solis, the charterer, or the claimant, to enter a Spanish port whether it was blockaded or not.

XII.—For that the Court erred in holding that the *Adula* sailed with intent to enter a blockaded port or to run the blockade.

XXIII.—For that the Court erred in holding that the additional evidence offered on behalf of the claimant, taken in connection with that already before the Court, would not change the result.

XXV.—For that the Court erred in holding that upon comparing the proofs proposed to be brought forward and with that already in the cause, the legal effect of the facts before the Court could not be varied by the circumstances of explanation offered on the motion to take further proofs.

XXVI.—For that the Court erred in refusing to allow further proofs to be taken in the case.

XXXIII.—For that the Court failed to decide that the voyage of the *Adula* was a friendly voyage, prosecuted solely to mitigate the horrors of war by the removal of non-combatants from the scene of hostilities, for which the consent of both contending parties was sought, and which was under the protection of the laws of war to the same extent as the voyage of a cartel ship.

XXXIV.—For that said Court decided that the said Solis was an enemy of the United States, although after diligent inquiry the naval officers of the United States had found no cause to detain him, and he was allowed by them to depart and was not held as prisoner of war.

XXXV.—For that the Court disregarded the undisputed evidence that there was no intent to run any blockade, and especially the proof that express notice of the voyage and its object and of the charter was given to the United States Consul at Jamaica, that the *Adula* approached the Cuban coast and anchored and whistled for a pilot, and that the naval forces of the United States at Santiago and Guantanamo were so overwhelming that any attempt to run a blockade maintained by them would have been ridiculous.

POINTS.

First.

Guantanamo Bay not blockaded.

1. In point of fact there was not any blockade whatever at Guantanamo Bay. The bay and shores adjacent were in the undisputed possession of the United States forces, and had been for nearly a month. The contention of the captors really is that a veil of absolute seclusion was thrown around the United States vessels there, and that no neutral ship had the right to go and speak to them under pain of capture. Such a proposition has no support in the law of nations. The theory of a blockade, is that the port blockaded is in possession of the enemy, and that vessels are stationed outside to keep neutrals from taking supplies to the enemy.

"The object of blockade is to destroy the commerce of the enemy, and cripple his resources by arresting the import of supplies and the export of products."

The Circassian, 2 Wall., 135, 149.

In the case at bar the bay was held by friends.

No products could be exported. None of the characteristics of a blockade existed. Guantanamo was not in the possession of Spain but of the United States. The United States forces were not stationed *outside* of the port, but occupied it, by land and sea, and the vessels in the harbor were not there to prevent neutrals from supplying the enemy inside the harbor, because there were no enemies there, the United States' lines being complete. Moreover, the *Adula* had no supplies to furnish in any event. She was unarmed: unable to contend with vessels of war, even had she been so minded. No wonder her officers testified that they had no knowledge of any blockade. (Page 91, Interrogatory 21), the purser says: "I did not know that Guantanamo was blockaded." Captain Yeats says the same thing (page 98). Again in answer to the 22d Interrogatory he says: "At the time we went to Guantanamo it was apparently under an order of blockade. No warning or notice had been given to or received by me as to this blockade."

Solis testified to the same effect (pages 108, 109, 113, Interrogatories 21, 22, 41).

The only testimony to the contrary is that of Morris, the colored seaman, who says (page 118, 21st Interrogatory):

"About three days before I left Kingston I heard that Guantanamo was blockaded."

Obviously the man confused the fact of the possession by the United States authorities, and supposed that this was a blockade. An ignorant sailor might very naturally do this. The claimant offered to adduce proof on this point also (p. 28, paragraph *g*).

2. This position is confirmed by the undisputed

facts as to the stopping by the *Vixen*. As the *Adula* was approaching the harbor of Guantanamo, she saw the *Vixen* coming out. The *Vixen* fired a gun, and the *Adula* stopped immediately, was hailed by the *Vixen*, and told to proceed, which she did (Testimony Yeats, p. 98, Int. 22). At page 103 he says:

"I received no warning as to the blockade until we were seized in Guantanamo Bay by Commander McCalla. Nothing was said by the officer on board the *Vixen* except to tell us to proceed. He was just passing out, and did not even stop his engines, and he asked us where we were bound, and we said to Guantanamo, and he said 'proceed.'"

The testimony of Solis is to the same effect (p. 104, Int. 5). So also the testimony of the purser, Williamson (p. 91), of Clarkson, the chief officer (p. 125), and of Hamilton, the quartermaster (pp. 132, 134).

If the order for additional proofs had been granted the United States would have had the right to examine the officers of the *Vixen* on this point, or on any other that might be material. But the motion was opposed, and the claimant's witnesses on this point are uncontradicted.

3. The learned District Judge failed to appreciate the effect of the possession of the port of Guantanamo by the United States military and naval forces. The annexed references to the history of the late war show that this was complete (Appendix to brief, pp. 65-67). Under such circumstances the authorities are clear that there can be no forfeiture of a neutral vessel.

The *Abby*, 5 C. Rob., 251.

The *Trende Sostre*, 6 C. Rob., 390, note.

In *Thirty Hogsheads of Sugar*, 9 Cra., 191, this Court says (p. 195):

"Although acquisitions made during war are not considered as permanent until confirmed by treaty, yet to every commercial and belligerent purpose they are considered as part of the domain of the conqueror, so long as he retains the possession and government of them."

The *Circassian*, 2 Wall, 135, does not support the converse of this proposition.

There New Orleans, which had been actually blockaded, pursuant to proclamation of the President, was taken May 2, 1862. The *Circassian*, bound for that point with intent to run the blockade, was captured on the high seas May 4, 1862.

"The rebel mayor and council were not deposed. There was no armed resistance, but the city was bitterly disaffected and was kept in order only by severe military discipline, and the rebel army was still organized and in the vicinity" (2 Wall, 141).

In the case at bar there was no city. Guantanamo Bay with its shores had been taken by our navy. It was used for a harbor for all naval purposes. There was no embittered populace who might readily communicate with an aggressive foe. On the contrary, throughout the war the Cubans welcomed our troops as deliverers (Appendix, pp. 76, 77 81).

Again, at New Orleans the blockade had been declared by proclamation, and its cessation was declared by proclamation May 12, 1862. This action of the government was held conclusive in the *Circassian* (p. 151). Neither fact exists in the case at bar.

Moreover, the decision in the *Circassian* was not followed by the International tribunal created by the Treaty of Washington. This held the United

States liable for the seizure. In a subsequent case between the same nations this should be controlling.

Lawrence Ed. Wheaton, p. 30.
Lawrence ; Belligerent and Sovereign Rights, p. IV.

4. No official blockade was ever declared of the ports of Santiago and Guantanamo. The proclamation for a blockade which was issued just before June 27th only included that portion of the southern coast of Cuba from Cape Frances to Cape Cruz. An inspection of the map will show that both Santiago and Guantanamo are east of the limits thus declared to be blockaded.

Even the authorities that are most rigorous in regard to the law of blockade concede that where the sovereign power of one belligerent has declared the limits of a blockade, it is not competent for a naval commander to extend those limits.

"Where a blockade has been declared by the Government, the commander of the blockading squadron has no discretionary power to extend its limits. If he prohibits neutral ships from entering ports not embraced in the terms of the blockade he was appointed to enforce, the warning is illegal, and no penalty is incurred by the neutral master by whom it is disregarded."

1 Duer Ins., 647, Sect. 23.

To the same effect is

The *Henrick & Maria*, 1 C. Rob., 146.

It is true that in an emergency, when immediate communication with the home government was impossible, naval officers have sometimes been held warranted in establishing a *de facto* blockade. But in the case at bar, no such justification existed. The facts as to the occupation of Guantanamo Bay were well-known at Washington, ten days before the Proclamation of June 27. If the government

of the United States had intended to prohibit intercourse with that bay it would have been easy to say so in the Proclamation. The omission to include that bay was in effect a license to go there.

5. History fails to show any parallel case where a port has been held to be blockaded. In 1776 the British forces were quartered in Boston, and the British fleet occupied the harbor, but no ships of foreign nations were seized as blockade runners.

In the war between England and France in 1807, after San Domingo revolted against the French Government, and the insurgents obtained control of some of the ports of the islands, the British Government recognized the very point for which we are now contending, that a port could not be declared blockaded when it had ceased to be in the possession of the enemy.

See cases cited under the Second Point, p. 18.

During the late war with Spain, no one pretended that Manila was under blockade after it had been captured by our forces.

It is simply a contradiction in terms to say that the Adula was attempting to run a blockade where, if she had succeeded in getting past the line of the warships, she would only have been in communication with the shore which was absolutely within the lines of our land forces, and was known to be so.

There is a close analogy in the rule of criminal law that a man cannot be held guilty of an attempt to commit a crime where the act, if completed, could not result in the commission of a crime.

In all such cases, even the proved intention will not convict the man, because the act itself, when completed, is not criminal. So also, in the

present case, an act cannot be styled an attempt to run a blockade, when its only possible result would have been communication with territory which was absolutely within the control of the land forces of the United States.

Second.

Relation of people of Cuba to United States.

Another fallacy which underlies the whole opinion of the District Judge is the failure to take any notice of the actual conditions under which the war in Cuba was being waged.

Joint Resolutions No. 21, approved April 20, 1898, are as follows:

Statutes at Large, 1897-'98, p. 738.

"Whereas the abhorrent conditions which have existed for more than three years in the Island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battle ship, with two hundred and sixty-six of its officers and crew, while on a friendly visit in the harbor of Havana, and can not longer be endured, as has been set forth by the President of the United States in his message to Congress of April eleventh, eighteen hundred and ninety-eight, upon which the action of Congress was invited: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

First.—That the people of the Island of Cuba are, and of right ought to be, free and independent.

Second—That it is the duty of the United States

to demand, and the Government of the United States does hereby demand that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

Third.—That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

Fourth.—That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said Island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the Island to its people."

These resolutions draw a broad distinction between the people of Cuba and the Spanish forces in that Island. The authority given to the President is solely for the purpose of compelling the Government of Spain to relinquish its authority in the Island of Cuba.

Following the policy of these resolutions, an Act was approved May 18, 1898, entitled "A Bill to provide assistance to the inhabitants of Cuba, and arms, munitions and military stores to the people of the Island of Cuba" and for other purposes. This Act is as follows:

Statutes at Large, 1897–'98; p. 419.

That while serving in Cuba during the existing war, officers of the army of the United States exercising separate commands, may by special order cause subsistence, medical and quartermasters' supplies to be issued to, and other aid rendered to inhabitants of the island of Cuba who are destitute, and in imminent danger of perishing unless they receive the same.

SEC. 2. That the President and general officers

commanding troops in Cuba, are hereby authorized to furnish to the Cuban people such arms, ammunition, equipment and military stores and supplies as they may require in order to increase their effective fighting force in the existing war against Spain.

The declared policy of the Government on this subject never changed. The treaty of peace which concluded the war, provides that the Island of Cuba is to be independent of Spain, but does not become the property of the United States. The following are the first two articles of this treaty:

ARTICLE I.

Spain relinquishes all claim of sovereignty over and title to Cuba.

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

ARTICLE II.

Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.

The only judicial precedents that have been found which throw light upon this situation, are those which grew out of the revolt of the negroes in San Domingo against the French Government, at the beginning of the present century. The British Admiralty Courts held that when the British Government recognized the possession of the insurgents as hostile to the French, with whom the British were at war, that part of the island occupied by the insurgents could no longer be treated

as hostile to the British, and trade with them became lawful. In

The *Manila*, Edwards Admiralty, 1,

it was held that permission given by the British Government to "any vessels to go to such parts and places in the Island of San Domingo as are not or shall not be under the dominion or in actual possession of His Majesty's enemies," recognized the insurgents to such an extent that neutrals were authorized to trade with the portions of the island occupied by them. In

The *Pelican*, Appendix D, to Edwards' Admiralty, the Court of Appeal says :

"It always belongs to the government of the country to determine in what relations any other country stands towards it. That is a point upon which Courts of Justice cannot decide."

To apply the rule of these cases to the *Adula*, it is plain that the effect of the messages of the President, the joint resolutions, and the Act of Congress before referred to, and the action taken by the authorities of the United States in pursuance thereof, committed this country to the proposition that the people of the Island of Cuba were friends to the United States. It follows of necessity that intercourse with them for the purpose of removing from the actual scene of hostilities such as desired to go, would not be a hostile act to the United States, but on the contrary, a friendly act.

The references to the history of the war, which are submitted herewith (Appendix, pp. 68-83), show distinctly that Gen. Shafter authorized the removal of non-combatants from the city of Santiago ; that their presence in the neighborhood of the United States army was a source of inconvenience and even injury to us, and that the sup-

port of these innocent and unoffending persons was undertaken by our army to its own prejudice. Every non-combatant taken away from the vicinity of Santiago while hostilities were going on there, would be a distinct advantage to the American armies. The *Adula* was only twenty-four hours sail from Jamaica. She could have taken several shiploads of refugees from Santiago before they began to leave the city for El Caney. The action of the *Marblehead* in preventing this was contrary to the declared policy of the Government from the beginning, and was a distinct hindrance to the prosecution of the campaign.

It is, perhaps, not surprising that the learned District Judge should have taken the view of the case he did at the time of the hearing. The war had been pending only about three months. Hostilities were prosecuted vigorously, and it was not unnatural that the learned Judge should have thought it important for the interest of the Government to prevent any possible evasions of the blockade, and to condemn the *Adula* as a warning against intercourse of any sort with any of the Cuban ports. But now that the war is over, and the matter reviewed calmly and deliberately, it would seem clear that the condemnation was unwarranted, either by the law or the facts.

Third.

Cartel Ships and Errands of Necessity and Humanity.

The authorities on the subject of cartel ships are in strict analogy to the present. These hold that the more humane principles applicable to the

treatment of prisoners, which have gradually become part of the laws of war, entitle to immunity from capture, cartel ships, intended *bona fide* to carry prisoners for exchange.

The leading case (with historical notes) is

The *Daifje*, 3 C. Rob., 140.

In line with this is

The *Rose in Bloom*, 1 Dodson, 57.

An American ship was captured on a voyage from Bayonne, a blockaded port, having passengers on board, with stores for their use. There were also puncheons of brandy, laces and so forth. The defense put forward was that the vessel was employed by the American Chargé d' Affaires to convey distressed American seamen home from the blockaded port. Though this seems to have been true, there were other circumstances to show that this was not the sole purpose of her voyage, and consequently she was condemned with her cargo (excepting the stores for the legitimate use of the passengers). The following words occur in Sir W. Scott's judgment :

"It is well known that many American seamen have been thrown out of employment and detained in the ports of France by the violence of the ruling power in that country ; if this ship had been employed by the American Chargé d'Affaires for the sole purpose of taking home these poor men, it would, I think, have been entitled to very favorable consideration."

Can there be any question that the removal of refugees was as much in the interest of humanity as the removal of American sailors, or the exchange of prisoners ?

In analogy to these cases is the established exception that it is no breach of blockade to enter a

blockaded port, in case of necessity, either for supplies, stores, or repairs.

The *Forest King*, Blatchf. Prize Ca., 1, 45, 48.
Affirmed in Circuit Court, *Ibid.*, 49.
The *Argonaut*, *Ibid.*, 62.

Fourth.

Implied License.

Another well-recognized exception to the law of blockade is that of implied license. Where a blockade has not been enforced rigorously, but some vessels from time to time have been allowed to enter the blockaded port, this amounts to an implied license to others to enter. Duer, who is the most strict of American writers in enforcing the rigor of the old law of blockade, admits the validity of this exception.

In

Sect. 30, 1 Duer Ins., 654,

the rule is thus stated :

"The application of the force to the purposes intended should be constant and uniform. * * * Where some are suffered to pass, others will have a right to infer that the blockade is raised." * * * "There must be repeated instances of an improper relaxation."

To the same effect is

The *Rolla*, 6 C. Rob., 364, 372.

In the *Juffrow Maria Schroeder*, 3 C. Rob , 147, the Court says (p. 158) :

"It is in vain for governments to impose block-

ades if those employed on that service will not enforce them; the inconvenience is very great, and spreads far beyond the individual case; reports are eagerly circulated that the blockade is raised; foreigners take advantage of the information; the property of innocent persons is ensnared, and the honor of our own country is involved in the mistake."

In the present case the *Adula* had been allowed repeatedly to go to Cuba and take refugees away. Certainly her owner had every reason to suppose that the consent of the naval authorities would again be given. No notice had been given that the policy of the Government in this respect had changed. On the contrary there was every reason to believe that a bombardment of Santiago would soon begin, that non-combatants would be notified to leave the city, and that the United States forces would be glad to have as many as possible removed. All this actually happened at the beginning of July. It was easy to foresee at the end of June.

Fifth.

Effect Declaration of Paris.

Again the opinion of the District Court overlooks the change in the law effected by the adhesion of this Government, at the beginning of the war, to the Declaration of Paris.

Stat. at Large, 2 Session, 55th Congress; Proclamations, p. 29; Appendix to this Brief, p. 64.

1. One important result of this declaration is stated fully by Pistoye and Duverdy—*des Prises*, Volume 1, page 365:

"Notwithstanding a war, neutrals continue

their peaceful relations with the belligerents. This is their right. But there are circumstances in which this right must suffer some restriction. Those neutrals should do nothing which can interfere with the plan of campaign, either offensive or defensive, of belligerents. * * * * We lay it down as a principle, that in order to constitute a blockade the place must be invested by a sufficient force to render entrance dangerous to ships which might wish to go in. In a word, every blockade must be real and effective."

At pages 373 and 375, the authors state expressly that by the modern law, in consequence of the Declaration of Paris, a vessel must be notified to depart from before the blockaded port before she can be captured, and that the contrary rule was the result of the doctrine of the British Orders in Council during the Napoleonic wars, which is now given up by that country. At page 375 they con tinue:

"The old rule was that it was a breach of blockade to enter upon a voyage to the blockaded port. This rule is now changed, because neutrals are obliged only to respect effective blockades. It may well be that a blockade of which official notice has been given, is not an effective blockade, or it may be that a blockade which has been established by a sufficient force, may have ceased to exist. Neutrals then have the right to begin a voyage to a blockaded port in order to see if the blockade still continues. They are only guilty when, while the blockade continues, they actually endeavor to break it."

---

* *Ib.*—"Les neutres continuent, malgré la guerre, leurs relations pacifiques avec les belligérants. C'est leur droit; mais il y a des circonstances ou ce droit doit souffrir des restrictions. Ainsi les neutres ne doivent rien faire qui puisse entraver le systeme d'attaque, ou de defense des belligerants."

* Nous poserons en principe que, pour qu'il y ait blocus, il faut que la place soit investie par des forces suffisantes pour en rendre l'entrée perilleuse aux navires qui voudraient s'y introduire. Ainsi, tout blocus doit être réel et effectif."

2. This effect of the Declaration of Paris is only an affirmation of the original American rule, which the stress of the war with Napoleon led Lord Stowell to restrict. The stress of the war with the South induced our Courts, at that time, to follow to some extent the English rule. Our Government had not then declared its adhesion to the Declaration of Paris. But now that we have joined with the other civilized nations in this important Declaration, there can be no reason to doubt that the old American rule is reinstated in this country.

Wheaton on Captures (pp.342,343),quotes a letter from the British Admiralty Office, January 5, 1804 (by authority Secretary State Foreign Affairs, page 342). In this it is stated that the British Government "sent orders to Commodore Hood not to consider any blockade of those islands as existing, unless in respect of particular ports which may be actually invested, and then not to capture vessels bound to such ports, unless they shall previously have been warned not to enter them."

This was approved by the Government of the United States (*Ibid.*, 353, Dispatch Mr. Pinckney to Marquis Wellesley). Again, in another dispatch our Minister maintains (pp. 354, 355):

"That a vessel cleared or bound to a blockaded port shall not be considered as violating in any manner the blockade, unless, on her approach toward such port, she shall have been previously warned not to enter it."

---

* "On considerait comme une violation de blocus le fait de se diriger vers des lieux qui étaient bloqués. Aujourd'hui il n'en saurait être de même, car des neutres ne sont obligés de respecter que les blocus effectifs; or, it peut se faire q'un blocus notifié efficiellement ne soit pas effectif, il peut même se faire qu'un blocus qui a été etabli avec des forces suffisantes ait cessé d'existeı; les neutres sont dans leur droir de se diriger vers un port bloqué pour voir si le blocus subsiste toujours; ils ne sout coupables que lorsque, le blocus existant, ils cherchent a le violer."

Wheaton's Note to Olivera *vs.* Union Ins. Co., 3 Wheat., 196, states the rule on this subject in substantially the same terms.

In Sperry *vs.* Delaware Ins. Co., 2 Wash. C. C., 243, 248, Mr. Justice Washington held that the question was always as to the *bona fides* of the enquiry, and that there could be no condemnation if there was no intent to force the blockade.

To the same effect are

The *Dispatch*, 1 Acton, 163.
The *Little William*, 1 Acton, 141.

In this case the Court of Appeal reversed Sir William Scott. The capture was the same as that under consideration in the Sperry case.

In Medeiros *vs.* Hill, 8 Bing., 231, 234, the Court says:

"Neither that case nor any other that can be cited, has laid it down that the mere act of sailing to a port which is blockaded at the time the voyage is commenced, is any offence against the law of nations, where there is no premeditated intention of breaking the blockade if it shall be found to continue in force when the ship arrives off the port."

Even in the Civil War cases there is an endeavor not to depart from this old American doctrine. In every case where the ship was condemned for intended breach of blockade, it was held that there was bad faith on her part.

The *Admiral*, 3 Wall, 603.

At page 615, the Court says:

"The mere act of sailing to a port which is blockaded at the time the voyage is commenced, is not an offence against the law of nations, where there is no premeditated intention of breaking the blockade. It is equally well established that it is illegal for a ship having knowledge of the existence of a

blockade to attempt to enter a blockaded port in violation of the blockade."

In the present case there was no attempt to enter any port. The *Adula* anchored and asked permission.

Indeed, where no blockade of a particular part has been officially declared, how can a neutral ascertain whether her entry will be forbidden except by going there.

3. On the authority of the cases above cited, the *Adula* could not be legally condemned, even if Guantanamo had been, by proclamation and in fact, a blockaded port. There was not the slightest secrecy in her movements, nor as to the ports to which she was to sail. Her sailing directions were plain, and have every stamp of honesty and were shown with the utmost frankness to the United States Consul at Kingston. In them the Captain is told to "proceed direct" to Guantanamo where he would "find, no doubt, American warships off the port." The Consul was also shown the charter, and was notified of the time the *Adula* was to sail, and a regular clearance for Guantanamo was obtained from the Collector of Kingston (p. 237). The Captain was even instructed to show the Commanding Officer of the squadron his sailing directions for the entire trip, in connection with the request for permission to enter Guantanamo. No conduct could have been more honest, and in no reasonable sense can it be said that the *Adula* had been warned not to approach the port. It was therefore her absolute right under the Declaration of Paris, even granting that the port was blockaded, to proceed to Guantanamo if she had no intention of breaking the blockade. Such an intention cannot possibly be imputed to her. Even if she had entertained the slightest hope, when sailing, that Guantanamo would be

found unprotected, that point was settled after she encountered the *Vixen*. Had she been proceeding as a blockade runner, she never would have acted upon the *Vixen's* invitation to proceed.

4. In the Civil War cases on the right to enquire of a blockading squadron, stress is uniformly laid on the fact found to exist that there was an actual intent to run the blockade, and that the enquiry was a pretext only. They dwell also on the danger of evasion if such a pretext is allowed. But where, as in the present case, no such question arises, and the neutral deliberately puts himself in the hands of the belligerent, no possibility remains for a claim that the enquiry could be elusory. Moreover, even the most rigid of those cases admitted that it was lawful for a vessel to enquire at a port not blockaded, or to seek there leave to enter one that was blockaded. In the case at bar, it has been shown that Guantanamo was not blockaded. It was, therefore, entirely within her right as a neutral, that the *Adula* should go there and ask leave to communicate with Santiago.

5. But apart from this, we stand distinctly on the proposition that the United States had not, at the time of the Civil War, become a party to the Declaration of Paris. At the beginning of the Spanish War it acceded to this Declaration, and must be taken to have recognized the consequences of such adhesion, pointed out long before by writers of authority on international law.

The common law rule: *Quando lex aliquid alicui concedit, concedilur et id, sine quo res ipsa esse non potest,** is applicable even more to interna-

*This rule was thus stated by Sir John Taylor Coleridge in Lord *vs.* Commissions, 12 Moo., P. C. Ca., 473, 499. "If you grant anything, you are presumed to grant, to the extent of your power, that without which the thing granted cannot be enjoyed."

tional acts than to local charters; especially to a great and beneficial modification of ancient rigor, in line with the progress of modern civilization. The whole system of international law is a growth and development. This Court has always been ready to recognize this growth, and to construe beneficially all treaties which have for their object the protection of the rights of neutrals, and the mitigation of the burdens of war.

This is especially true, in view of the changes in naval warfare. Blockades are now maintained by steam vessels of great speed, armed with search-lights aud long range guns. To evade them is far less easy than when they were maintained by sailing vessels, and when a swift sailer, getting to windward of them, could easily slip in.

The *Olinde Rodrigues*, 174 U. S., 510, 519.

The question whether a vessel is trying to run a blockade is a question of fact, and the rule as to enquiry is merely one of convenience, to be modified by new conditions of warfare. The *Adula*, a vessel whose speed was eight and a half knots (p. 148), by approaching to make enquiry of a swift cruiser, really put herself more completely in the latter's power.

In The *Juno*, 2 C. Rob., 116, Lord Stowell held that a neutral ship which had obtained a license from the British Government to take a cargo into Amsterdam should not be forfeited if the master, *bona fide*, brought a cargo out, although permission to do so was not expressed in the license. The Court says (pp. 118, 119):

"I will go farther, and say that if I was convinced that there had been an honest mistake on such a matter; if there appeared nothing insidious, nothing more than a misapprehension on the part of the neutral master, I should not apply too

strictly the maxim, *ignorantia juris non excusat*, against a foreigner, mistaking the exact meaning of a license of another country and in so doing should persuade myself that I did no more than what an equitable regard to the honor of the country which granted such a license must be supposed to require. * * * The license is silent on that point; but having said that, if I was convinced the party acted under an honest application of his license, though erroneously, I should think him entitled to the most liberal interpretation. It will be proper for me to consider what the man did, that I may see, supposing that there has been a mistake, whether it was a mistake of honest conduct, purely erroneous and innocent; thinking that, if it is so, it would be sufficient for the present case. The master takes the returned cargo on board, and comes to a port of this kingdom, and solicits the protection of a convoy, acting as openly and with as little concealment as possible. There is nothing in the *res gesta* on which the imputation of fraud can be fixed."

Sixth.

Intention to run the blockade.

The rule on this subject is stated by this Court in the Olinde Rodrigues, 174 U. S., 535.

"The evidence of evil intent must be clear and convincing before a merchant ship belonging to citizens of a friendly nation, will be condemned."

On the same page this Court, in summing up the reasons why the French steamer seized in that case should not be condemned, refers to the fact that she was owned by a "widely known and reputable company * * * and the testimony of her captain and officers denied any intention to commit a breach."

Although therefore, circumstances of the gravest suspicion existed in the case of the French steamer, this Court nevertheless refused to condemn her. In the case at bar no circumstances of suspicion exist. Everything points to the fairness and legality of the voyage as fully shown under the previous points.

In the Prize cases, 2 Black, 635, the Court says (p. 675):

"All reasonable doubts shall be resolved in favor of the claimants. Any other course would be inconsistent with the high administration of the law, and the character of a just government."

This salutary rule was overlooked by the District Judge, who appears to have been influenced, either by recollection or by tradition of the blockade running during the Civil War. The Court, instead of framing interrogatories which would be suitable for the existing case, adopted those which had been in use during the Civil War (p. 80). These were skillfully drawn to elicit information as to false papers, deceptive registers, concealment of contraband of war, and the like. But all the prize cases during the Civil War may be searched in vain for an instance of a vessel going in broad daylight to the entrance of a port claimed to be blockaded, exhibiting herself freely to the armed vessels of the power supposed to be maintaining a blockade, anchoring and giving signals for a pilot. On this crucial point of intent the entire case broke down from the first. The hearsay to the contrary in Ex. 34 is not evidence.

It is possible that in view of the exigencies of the war, it may have been proper to seize Solis and search his papers. But when this was done it was manifestly the duty of the United States naval authorities to send the *Adula* about her business. Everything that was done after that was a breach

of international comity, a plain violation of the law of nations. The action of the Court below shows a failure to appreciate the facts of the case. Authorities are cited, applicable enough to the business of blockade running as it existed during the Civil War, but entirely irrelevant in the present controversy.

The *Adula* would never have been arrested had it not been for the suspicion that Solis, who was the charterer, was endeavoring in some way to carry communications to the Spanish forces that would be prejudicial to the United States. This suspicion was absolutely dispelled by the examination of his papers. The United States naval authorities acknowledged this by letting him go free.

If the *Adula* violated any law in going to Guantanamo, Solis violated the same law. If the ship was liable to punishment so was he. The judgment in his favor should for a much stronger reason have been extended to the neutral ship on which he was.

The learned District Judge quotes the *Circassian*, 2 Wall, 135, to support the proposition that "the *Adula* was subject to seizure from the time of sailing with the intent to run the blockade."

This decision need only be examined to make the distinction manifest between it and the present case. The charter there contained an express stipulation that the steamer should "run the blockade if so ordered by the freighters" (p. 152). A collateral memorandum contained this engagement by the charterer: "The merchandise shall not be disembarked except at New Orleans, and to this effect he engages to force the blockade." Had these clauses been contained in the *Adula's* charter and letter of instructions, the cases would be parallel. Now they are antipodes.

Seventh.

Position of the United States Consul.

Much stress was laid in the Court below upon the action taken by the United States Consul at Kingston. The claim is made that he forbade the sailing of the *Adula*. To the argument based on this proposition we reply:

1. The Consul had no authority in the premises. This he himself admitted. The only evidence on this subject which was before the Court on the depositions *in preparatorio* was that given by Solis (pp. 106, 109, 114; Int. 12, 22, 41). The substance of the testimony is that Solis thought he could get an express permission from the Consul to enter the port of Guantanamo with the *Adula*. To obtain this he called upon the Consul with a letter of introduction from a mutual friend. At p. 106 he says:

"I explained to Mr. Dent the idea of my voyage. He told me he was sorry he could not give me the passport I wanted, because he was not allowed to give such passports unless he had permission from the American authorities in Washington. As I was going to leave two hours afterwards he said there was no time to ask permission. I said: 'Look here, Mr. Dent, I don't think there is anything wrong, because my intention is to go to Guantanamo and ask permission of the American Admiral to allow me to go. If he does not allow me I come back.'"

2. Inasmuch, however, as upon the hearing great stress was laid upon the testimony as to the interview between Solis and the Consul, the claimant asked leave to put in additional evidence on that subject, and produced the statement of Forwood's before mentioned (which was received as an affi-

davit), showing exactly what took place between him and the Consul. The way in which this was treated in the Court below shows, as has already been argued, that entire credence was given to Mr. Forwood's statement. What he says on this subject is at page 34 of the Record.

From this it distinctly appears that no formal notice not to go was given by the Consul to Forwood. At the most the statement amounted to a warning that the ship would not be allowed to enter—a far different thing from a prohibition to enter. Forwood later expressly testifies that if such an official notice had been given, the ship would never have been dispatched (p. 35). The most that can be said of the conversation is that Dent advised Forwood not to send the ship, and called his attention to the claim that Solis was a Spanish agent "carrying $300,000 in gold to buy over the rebels in the American camp." Forwood's reply was, "I told him I had inquired about the man, and it was one of the usual Kingston yarns." In this respect it is clear that Forwood was right. The most careful search and all the inquiry that the diligence of the Government could suggest, disclosed no evil in Solis, and he in fact was released. The rigor of the search is described by Clarkson, the first officer (p. 126, Int. 23); see entries in Log, (pp. 199, 201-207, 209).

3. A consular warning, even if expressed officially, could scarcely be held as closing a port unless in compliance with an official proclamation of his government.

See authorities cited under First Point, subd. 4, p. 14.

Eighth.

The Position of Solis with Reference to the Voyage.

1. Stress was laid in the Court below on the fact that Solis was a subject of the Queen of Spain. He was born near Havana. His home was in Manzanillo, and he says in answer to the first interrogatory (pp. 103, 104): "I am a subject or citizen of Spain, and owe allegiance to Spain."

At page 109, in answer to interrogatory 22, he states his position fully, and says that during the insurrection his conduct had been that of a neutral.

"I have been in Cuba in a peculiar way. I never went in politics, and I was French Consul. They wanted me to be mayor of the town. I told them no; I was French Consul. I used to go into the country, fifteen or twenty miles from the city, and country people always treated me nicely. The people I have in my saw-mill all know me very well. After General Weyler came in the country I could not go in the country any more, because I feared that General Weyler might suspect me of being an insurgent."

There is not a particle of evidence that he ever in any way co-operated with the Spanish authorities during the war, or rendered the slightest aid or comfort to the Spanish forces.

2. Stress was laid upon the fact that Solis had a passport from the Spanish Consul to enter the cities to which he was bound, "and take passengers, refugees." At p. 106 (answer to 12th interrogatory) Solis gives the reason for this:

"He gave me that authority, it being for the sake of humanity, to take those refugees off."

Counsel entirely overlook the fact that in order

to accomplish the object of the voyage it might become necessary to have the consent of the Spanish authorities as well as of the American authorities. Either was at liberty to refuse it. If both consented the business would be lawful, and it was for the real interest of both to consent.

3. Stress was also laid upon Solis having what is described in the Record as a personal passport (p. 220). This states as follows:

"Don Josè R. Solis Vazquez, native of Santiago de las Vegas, province of Havana, 44 years of age, married man, by profession a merchant, dwells in Marina street, No. and resides habitually in that ward and at that number."

It is dated at Manzo, April 13, 1897.

How extraordinary the claim that an innocent document like this, issued to a native of Cuba more than a year before the war, should indicate in any way that he was hostile to the American cause, or had any purpose to assist the Spanish forces.

4. Again, stress is laid upon a statement of Captain Yeats (p. 101, 39th Interrogatory).

"To the best of my knowledge and belief, the *Adula* is owned by Forwood Brothers, and her destination was to Guantanamo Bay for refugees, and thence to Santiago and Manzanillo and such other places that the charterer may desire to go after we had visited those ports."

In reference to this testimony of the captain, the attention of the Court is called to its own language in the Olinde Rodriguez, 174 U. S., 510, 528:

The Captain's deposition "was given in answer to standing interrogatories and not under an oral examination; that the statute (Rev. Stat., Section 4622) forbade the witness to see the interrogatories, documents or papers, or to consult counsel, or with any persons interested, without special authority from the Court."

Counsel for the claimant was not present, and had no opportunity to put questions, and thus elicit explanations.

Taking the statement already quoted in connection with the answer to the 18th interrogatory (p. 97) it appears distinctly that the statement was given simply from memory of the contents of written papers, to which at the time of the answer the witness had not access. At page 97, referring to these papers, he says:

"I read my letter through only once, that came from Captain Forwood, and I cannot say exactly what is contained in it. * * * I don't exactly remember the exact tenor of the papers that were on board the vessel. It is a long time since I have seen them."

The testimony, be it noted, was taken July 22, 1898 (page 94), nearly a month after the seizure, and the surrender of the papers to the United States authorities.

Now it is clear that in any other case the Court would disregard entirely this oral evidence as to the contents of the instructions. These were in writing. They specify distinctly three ports and three ports only, to which the vessel was to go (p. 187). The only option that the charterer had was to omit some of the ports. "He has the option of going to the three ports, but it may be convenient for him to go to only one, or even two." The charter (page 187) is to the same effect:

"The ports that the vessel is to go to are Manzanillo, Santiago and Guantanamo. * * * If she is not permitted to enter either Manzanillo, Santiago or Guantanamo the vessel is to return to Kingston."

Could anything be more unjust than to seize an expression of the Captain such as that already quoted, not stated positively, qualified as has been

shown, by himself, and set it up as a ground for condemnation in a case like the present? The charter and instructions were in writing. There is not the slightest pretense for a claim that they were in any degree collusive or deceptive. Captain Forwood's affidavit and statement show conclusively that he was acting *bona fide* in the matter; that he made a contract with Solis which he believed he had a right to make, and the terms of which were enforceable by either against the other. The captain was not present when the agreement was made. He does not claim to have received any instructions from Captain Forwood, excepting those that were in writing. How absurd, as well as unjust, then, to pretend that there were any instructions except those that were in writing. This is especially so when the fact of authority, outside of or in opposition to the written instructions, is absolutely denied by the charterer.

At page 112 (36th interrogatory) Solis says:

"I was seasick in my room, suffering very immensely. I went to bed when we left Kingston, and didn't get out of bed until we arrived at Guantanamo Bay. The orders given to the captain were to go straight to Guantanamo. I had no right to direct the captain. We agreed that the vessel would go from Kingston to Guantanamo, from Guantanamo to Santiago, and from Santiago to Manzanillo. If I was to state to the captain to go here, he would say, 'You have no right to direct me.' I did not have the right to direct them to any particular port. We were not trying to take in ports on our way. If I could not get to Santiago, I had to go to Manzanillo. I had no right to direct the navigation of the ship. The only right I had was to direct it from Kingston to Guantanamo, and from Guantanamo to Santiago, and from Santiago to Manzanillo, and from Manzanillo to Kingston."

5. Under the charter in question the *Adula* was

officered and manned by the owners, and her navigation was under the direction of a captain employed and paid by them. The whole space of the steamer is put at the disposal of the charterer, "for the conveyance of passengers from Cuban ports hereinafter to be named, to Kingston." "For these services the charterer shall pay the company for the hire of the vessel one hundred pounds per day" (p. 11).

The instructions accompanying the charter were given, not by Solis, but by Captain Forwood, of the Atlas Steamship Company. They show distinctly that the entire navigation was under the direction of the captain; that Solis had nothing to do with it, excepting to waive the going to one of three specified ports (pp. 12, 13).

Under these circumstances it is well settled that the charterer had no special ownership in the vessel. He was a mere contractor for a designated service, and the duties and responsibilities of the owner were not changed.

Leary *vs.* The United States, 14 Wall., 607.

Morgan *vs.* The United States, 14 Wall., 531.

Shaw *vs.* United States, 93 U. S., 235.

In the Morgan case this Court say:

"In no sense were the United States owners of the vessel. They had nothing to do with her management and only reserved to themselves the right to say how she should be loaded, and where she should go."

To the same effect is Bramble *vs.* Culmer, 78 Fed. Rep., 497 (4th Circuit).

S. C., 42 U. S. App., 303.
24 C. C. A., 182.

In the latter case it was held that the fact that

the pilot was to be paid by the charterer did not vest the latter with a special ownership in the vessel. It is manifest from a careful examination of the charter party in the present case, that the only reason why the charterer was to provide a good and efficient Government pilot was that the company was not willing to take any risk in regard to the entry to the particular ports.

The charter expressly provides that "it shall not be deemed a breach of this agreement should the steamer be prevented from entering any of those ports from causes beyond the control of the company."

In short, the whole tenor both of the charter and of the instructions, shows that both parties clearly understood that it was quite possible that the belligerents might not allow the *Adula* to enter any of the specified ports, and that the risk arising from this cause, that the charterer might have to pay hire, although he received no passenger money, was upon the charterer. But the right of control and management by the company is sedulously retained.

Solis admits that he was fully informed of the instructions given by Captain Forwood to Captain Yeats (p. 110).

It follows that there can be no claim to forfeit the *Adula* on the ground that Solis was in possession of letters directed to persons in Cuba. This is one of the points on which the claimant sought to introduce additional evidence (page 29) to the effect that Captain Forwood "had no knowledge, information or suspicion that said Solis would take any letters from Jamaica to Cuba." Solis did in fact testify, as has been shown, and as the claimant asked permission to show more clearly, "that such letters were taken by him (Solis) at the last moment, solely in answer to the importunities of persons who for a long time had no opportunity

of communicating with friends in Cuba; that he originally did not intend to take any letters; that he did not conceal the same, and would cheerfully have submitted them to the inspection of the United States naval officers, and not have undertaken to pass the same through the lines without their consent" (p. 29).

Under the circumstances in evidence, these letters must be considered like letters which are offered to the authorities having control of military lines, to be forwarded under a flag of truce. In time of war this courteous method of alleviating some of its unnecessary horrors is often resorted to. Certainly the request to be allowed to forward such letters can never be a cause of forfeiture.

The *Acteon*, 2 Dods., 48, 51.
The *Rapid*, Edwards, 228.

Even if the letters were contraband, that would not forfeit the ship.

The *Peterhof*, 5 Wall., 28, 61.
The *Springbok* 5 Wall., 1.

As to the letters on the steamer addressed to persons in the United States by persons in Cuba, evidence was offered in explanation, to the effect that Forwood had no knowledge, information or suspicion that such letters were brought on the *Adula*. Further, that "William Walker, the former captain of the *Adula*, will testify that such letters were brought by him from Cienfuegos at a time when that port was not blockaded, and solely as a matter of courtesy to the writers and the persons to whom they were addressed, and that such letters were letters wholly of business or friendship, and contain nothing which might not lawfully have been permitted to pass through the American lines" (page 29). The abridgment of these letters describes

them as relating solely to commercial and domestic matters (page 213).

6. An attack was made on Solis in the Court below because he expected to make money from the transportation of refugees. This is irrelevant. If his business was lawful and praiseworthy, it is not to be condemned because the person engaged in it would benefit by it. The refugees who were desirous of getting away were able to pay for the service. All accounts agree that many of them were persons of wealth, anxious to pay for food, shelter and transportation, none of which were to be had in Santiago or its vicinity on land, but which, as now appears, were on the sea, near Santiago, awaiting only the consent of the United States naval authorities. Indeed, the very criticism is an admission that the object of the voyage was a lawful one.

7. The District Judge (p. 61) calls the business of Solis "suspicious in the extreme." As the *Adula* cannot be charged with trying to land provisions, he must have considered communication with the enemy the object of the voyage. But if this had been Solis' object, how absurdly his means were adapted to his ends. Who would pay one hundred pounds a day for an empty steamer when a schooner or despatch boat would be cheaper, less conspicuous, and better suited to the purpose? A small vessel could much more easily have landed despatches along the coast where Spaniards were and Americans were not.

Ninth.

Additional Testimony.

The Court below cites the *Pizarro*, 2 Wheat.,

240, in support of the proposition that if the captured crew "fraudulently suppress any material facts they will not be indulged with an opportunity to disclose what they please," etc.

But where is the fraudulent concealment in this case?

The witnesses when examined in secret, answered only questions put to them. These questions were drawn with reference to a case widely different from this. The witnesses had no opportunity to explain. In the *Pizarro*, the witnesses were twice examined in open Court (p. 230). Of their testimony Mr. Justice STORY says (p. 241): "In the present case there can be no doubt that there has been a gross prevarication and suppression of testimony by the master and supercargo."

It may be noted that notwithstanding this, the *Pizarro* was not condemned, but restored to her owners (pp. 230, 247).

But no Court should now apply the dictum in the *Pizarro* literally. The law of evidence has made great progress since that case was decided. Courts and lawgivers now recognize that in order to get at the real truth of a case, all parties acquainted with the facts, whether interested or not, should be examined and cross examined in open Court. The observation already quoted of the Chief Justice of this Court, in the *Olinde Rodriguez*, shows that prize cases are not an exception to this amelioration of the law of evidence, and that the examination of witnesses in secret, on written interrogatories, without the aid of counsel, is no longer considered as the perfection of justice. It was, indeed, most unjust to assail the good faith of Solis and the owner of the *Adula*, and yet allow them no opportunity to offer explanations in open Court.

The only excuse for the denial of the application to introduce such evidence is that given in the

order, viz.: that it does not vary the legal effect of the conceded facts. The more carefully the case is examined, the more clearly does it appear that while the opinion claims that bad faith was shown, the decision is based on the proposition that a *bona fide* voyage to ask permission of the navy to remove refugees was *ipso facto* a cause of forfeiture.

Tenth.

The course of the "Adula" on her last voyage.

Two points were made in the Court below on this subject:

(1.) It was claimed that the course of the *Adula* was not correctly entered in her log, and the deposition of Lieutenant Anderson, taken *de bene esse*, was offered in evidence on the motion for additional proofs. There is testimony in this deposition bearing upon the question as to whether or not the course of the *Adula* was correctly stated in the log. The captain, however, testifies in answer to the 36th interrogatory (p. 92) that the winds and currents carried her to the westward. For this Lieutenant Anderson makes no allowance. He also takes it for granted that the captain got a noon observation of the sun on the 29th. The captain says, however, that it was cloudy and he could get no observation of the sun (p. 101) and the log shows that it was cloudy on that day (p. 199). This was one of the points on which the claimant asked to take additional testimony (Paragraph C, p. 27).

(2.) The point was also made that the course of the *Adula* was directed towards the harbor of Santiago, and that on seeing the war vessels there, she

changed it towards Guantanamo. The reasons given by Captain Yeats for what he actually did in this matter are entirely satisfactory, and not contradicted in any way He did not know the coast east of Santiago, and he expected to communicate with the Admiral off that port.

He says (p. 96, 12th Interrogatory) :

"The reason for our going by Santiago was on account of my not being acquainted with the coast line to the eastward of Santiago, and I had no large scale chart, and therefore I steered more to the westward than I should have done, and I went more to the westward to make out the land, because I knew the coast about Santiago and I didn't know the coast about Guantanamo Bay."

Again at page 100 (36th interrogatory) he repeats the reason with some amplification, and at page 101 he says :

"I believe we went to within about ten miles of Santiago. I recognized the highlands about Santiago. I won't say it was ten miles ; it might have been ten miles. Our course was not altered to any other port except Guantanamo. That was the port that we were steering for. * * * The reason for changing my course was seeing the vessels at Santiago, and I expected to be stopped, and I changed my course from the west to the eastward, and then I changed around to the westward. The first time I changed around to the eastward to come to these vessels, and when I found there was no vessels approaching us I then turned right around and turned to the eastward and hauled for the eastward for Guantanamo Bay."

Morris also testifies (p. 117) :

"The *Adula* left Kingston to go direct to Guantanamo, and she went direct to Guantanamo ; she didn't go to any other port, and she didn't get in sight of any other port."

See also evidence of Clarkson, the first officer (Int. 36, p. 127).

Additional testimony was offered, to the effect that the Captain

"expected that one of the United States vessels, which were well known to be off the port of Santiago, would come to meet him, and that application could in this way be made by him to the commanding officer of the squadron, who was supposed to be off Santiago, for leave to enter the port of Guantanamo. Captain Yeats of the *Adula*, will so testify, and that his reason for so doing was that no vessel came to meet him, that it was towards evening, and that if he went further towards Santiago, it would be too late to enter the harbor of Guantanamo that night, that the coast outside was rocky and not well lighted" (p. 27).

The answer filed by the United States to the motion (page 42) insists that Captain Yeats has already testified fully on these subjects. One of two things is clear. If he did testify fully, his explanation is satisfactory. If on the other hand his testimony is not considered sufficiently full, he ought to have been allowed the opportunity to make it so. The answer filed by the United States would seem to intimate the unwarranted claim that the witnesses on the *Adula* would not tell the truth, and that therefore they were not to be allowed any opportunity for explanation.

If the depositions taken *de bene esse* were to be received at all, claimant had the right to answer them. The Court below treated the affidavits as an answer, assumed the correctness of the facts therein stated, and held that the *Adula* should be condemned, as matter of law, nothwithstanding those facts.

The absurdity of the whole position on the part of the captors is best shown by the undisputed fact that the *Adula* was at anchor when she was captured (page 107, 19th Interrogatory) that she was then whistling for a pilot, and that she made no

concealment whatever of her movements at any time, but on the contrary notified them to the United States authorities before she sailed.

Eleventh.

Previous Voyages.

It is admitted that there can be no forfeiture for what was done on previous voyages.

The Wren, 6 Wall., 582.

But an inference of guilty intent was sought to be drawn from these voyages. The fallacy in this consists in ignoring the fact that trade between the British colonies and Cuba was legal, except so far as blockaded ports were concerned.

1. The proclamations in the record show distinctly that the United States Government never undertook to blockade the whole of Cuba. The blockade first declared was only of the north coast of Cuba between Cardenas and Bahia Hondo, and the port of Cienfuegos, on the south coast (p. 211). The second proclamation dated June 27, 1898, extends the blockade, so far as Cuba was concerned, only to those ports on the south coast "from Cape Frances to Cape Cruz" (p. 212). Communication between neutrals and the rest of Cuba was therefore lawful.

The object of the limitation is apparent, when it is remembered that the insurgents were strongest in the eastern provinces, and it was important not to hinder communication with them.

2. So far as the first two voyages to Cienfuegos were concerned, they were made with the full authority and consent of the United States Gov-

ernment, and no possible blame can be imputed to the owner of the *Adula* for sending her on these voyages.

3. So far as the third voyage to Cienfuegos is concerned, there was no blockade at that time. No vessel was seen off the port either going in or coming out (pp. 32, 33 102). No suggestion is made that stress of weather had obliged the blockading vessels toleave the port, and we know from the history of the times that the vessels that had been stationed there, were ordered to leave that port and concentrate before Santiago and Guantanamo.* This is one of the facts which claimant asked leave to prove (pp. 26, 27, parag. *b*). After leaving Cienfuegos the last time the *Adula* was hailed by the *Yankee* and warned not to go there again. But no objection was made to her having been there. This was a tacit approval. The statement of the District Judge that she was " warned off again and again " is absolutely erroneous.

It is extraordinary that stress should have been laid in the Court below upon the delivery of provisions at Cienfuegos. The absolute distress for want of provisions that existed in many parts of the Island of Cuba, which distress was largely caused by the action of Gen. Weyler with reference to the reconcentrados, was one of the determining causes of the war. To maintain that it was unlawful for a neutral vessel to enter a port which was not in fact blockaded, and leave provisions there, shows the failure to appreciate the actual situation which led to the decision of the Court below.

4. The same observations apply to the criticisms passed upon Solis. The charge is made that he had been engaged in the business of blockade running. Of this there is not a parti-

* Morris, History War with Spain, 188.

cle of proof. Telegrams were found in his possession which might lead to the conclusion that he had been engaged in bringing refugees away from Cuba and in taking provisions there. But Montego Bay, St. Ann's and Kingston, the places mentioned in these telegrams (pp. 220–222), are all in the Island of Jamaica. There is not a particle of evidence that any of Solis' connections with the Island of Cuba had involved a breach of the blockade, or communication with any of the blockaded ports.

At page 29, paragraph j, claimant offered proof "that in fact large portions of the island have been ever since the declaration of war occupied by friends and not enemies, of the United States, cooperating with them to drive the land and naval forces of Spain from Cuba, and Cuban waters" (see Appendix, pp. 76, 77).

5. The facts as to these previous voyages really corroborate the testimony as to the *bona fides* of the last. They show the *Adula* doing exactly what it is alleged she intended to do upon the voyage on which she was seized. The instructions given Captain Walker on these voyages (pp. 231–234) differ in detail from those to Captain Yeats. But the substantive instruction that the voyage is solely to bring away refugees is the same. The necessity of communicating with the United States naval authorities is emphasized.

6. If any importance is attached to Capt. Yeats' letter to his parents (pp. 234–236), we reply:

(*a.*) This was written July 13, 1898, two weeks after the seizure. It was not evidence against the ship, for the captain had then no authority to bind her. It was not evidence against him, for it was not shown to him, and he had no opportunity to explain it.

(*b.*) As a statement of what occurred on previous voyages it is irrelevant. If the information Yeats claims to have received, that Gen. Blanco's secretary had sailed on the *Adula* from Cienfuegos is correct (and there is no proof that it was) he had a right to sail on her, for Cienfuegos was not then blockaded. The captain states: "We were quite ignorant of the fact, especially as he had assumed another name."

(*c.*) As to the final voyage the letter states: "As far as the ship is concerned, she was on perfectly legitimate business, fetching refugees" (p. 235).

(*d.*) If then it be asked why Capt. Yeats says: "I have anticipated this for some time";—the answer is plain. The ship was dealing with belligerents.

To carry a flag of truce to the belligerent lines is hazardous. The Spaniards had seized the ship on one of the voyages and detained her sixty hours (p. 31). It was possible to suppose that the Americans might do the same later. The surprise is that they treated her worse than the Spaniards had done. As the Captain says: "If they don't prove Mr. Solis guilty of trying to carry dispatches, this experiment will prove rather an expensive one."

(*e.*) The letter throws light on the rigor of the search, and the strictness of the guard kept over Solis, and demonstrates that if he had been guilty of taking dispatches he would have been detected.

(*f.*) As to the clipping from the New York *Sun* (pp. 236, 237), which Captain Yeats enclosed to his parents, it contained what Captain Forwood called "one of the usual Kingston yarns." Captain Yeats marked it "Humbug." It shows that the seizure was really a newspaper seizure, brought about by the fertile brain of a *Sun* reporter.

"What mighty contests rise from trivial things."

7. On all the previous voyages, it is plain that the sympathy and interest of the master were with the United States and he was distinctly of service to them (pp. 31, 32). It was the *Adula* that put the American navy on the track of Cervera's fleet.* On several occasions she was of service to our navy (Record, pp. 30-32). We have a right to use these facts as evidence of fair and not hostile intent.

Twelfth.

Spoliation Papers.

Much stress was laid on the argument in the Court below upon the alleged spoliation of the passport or consular letter granted by the Spanish Consul at Kingston, to Solis.

1. The positive proof was that no such spoliation occurred. Captain Yeats testifies (p. 98, Int. 19):

"There were no papers burned, torn, thrown overboard or concealed, nor was any attempt made to conceal any when the *Adula* was captured."

At page 100 (Int. 31, 32), he testifies that the U. S. officers have all the papers on the *Adula*, and that they were carried away by Captain McCalla, of the *Marblehead*.

Solis testifies to the same effect (pp. 107-108, Int. 18, 20). The other witnesses from the *Adula* testify to the same effect (p. 118, Int. 20; p. 125, Int. 20; p. 133, Int. 20; p. 140, Int. 20).

2. The argument that there was spoliation is

*Morris' History of the War with Spain, p. 191.

based upon the testimony of Solis (p. 106, Int. 12), that he got from the Spanish Consul a passport to the Spanish authorities "to allow him to go in and take passengers, refugees," and on the fact that this passport is not among the papers returned by Lieutenant Anderson. Lieutenant Anderson's affidavit on this subject is at pages 81, 82. He annexes a list of 151 documents. The affidavit, however (page 82), admits one error in the list and contains a statement that "if at any time hereafter * * * any further or other papers relative to the said captured property shall be found or discovered to the knowledge of the deponent, they shall also be delivered up." This would seem to contain a distinct admission that it was possible that another mistake might have been made by some of the United States officers. To admit this is to admit simply that they were human. It cannot be seriously claimed that the mere fact that no such paper was returned by Lieutenant Anderson, can outweigh the positive testimony of six witnesses that no spoliation of papers occurred.

3. The claimant asked leave to introduce additional testimony that this passport or consular letter was actually given to Captain McCalla (p. 26, paragraph a). An offer was made to obtain a duplicate thereof from the Spanish Consul at Kingston. The opposition of the captors to taking additional testimony indicates that Captain McCalla would not have testified that he did not receive this passport or consular letter. It might easily have been lost or mislaid, and its loss cannot possibly be attributed to the claimant.

4. In *The Olinde Rodriguez*, where there was an admission of the destruction of two bills of health, this Court says (p. 529):

"Transactions of this sort constitute in them-

selves no ground for condemnation, but are evidence more or less convincing, of the existence of such ground."

In the case at bar, even if there were any evidence to warrant an inference that there had been a spoliation of this paper, no inference could justly be drawn against the claimant. It was obvious that in order to remove refugees from Santiago the consent of the Spanish authorities would be necessary. It was therefore properly obtained. No secret was made of the fact, and none was possible. Solis made no concealment of the fact that such a passport existed. At page 111, Int. 35, he testifies fully as to its terms.

Thirteenth.

The fundamental question in this case is whether this Court will hold the captors to the pledges which were made by the Congress and the President at the beginning of the war. It is writ all over this record, and no ingenuity can blot it out, that this ship was the ship of a friendly nation; that she went to Cuba on a friendly errand, an errand of humanity, justified—indeed invited—both by the joint resolutions of the Congress, and by the Proclamation of the President; that boldly and without concealment she announced her purpose, and in broad daylight went to a harbor in full possession of our naval forces, and asked permission to enter. She had no force to compel admission, and used no guile to obtain it. For this she was seized—for this she was condemned. It is idle to say that Solis was a Spanish subject. He was no doubt suspected of hostile intentions. He was seized, his papers taken from him, his person

and effects searched, and no cause for detention was found in him. The Government took him to Savannah and let him go. They did not hold him as prisoner of war. They let him go. His being on board is therefore no cause for condemnation of the ship that carried him. Even the carrying of contraband of war in a neutral bottom forfeits the goods only, but not the ship. The *Adula* cannot therefore be condemned because Solis was on board. And the question recurs—Shall she be condemned because she went on a friendly errand, unarmed and openly, relying on the pledges of the Government of the United States, to enable the removal of non-combatants and neutrals from the lines of the American army and the walls of a beleaguered town?

This Court has done much for the honor and integrity of the United States. It is not too much to say that it has done more for the stability of our Government and its permanent prosperity than Executive and Legislature combined. The nobler American characteristics of honor and good faith this Court has always expounded and defended. To this Court, therefore, the owners of the *Adula* do now with confidence appeal.

Fourteenth.

Damages.

If the propositions already presented to the Court are correct, there was no probable cause for the seizure, and certainly none for the detention, of the *Adula*, still less for sending her in for condemnation as a prize. No circumstance of just suspicion existed when she was seized. None were disclosed by the search that was made by the United States

authorities. On the other hand it has been shown that her seizure was opposed to the declared policy of the Government, and that it was a serious prejudice to the operations of the army on land. Can there be any question that she would never have been detained had it not been for the rule giving captors a share in the prize money? No one certainly would underrate the daring or patriotism of the United States Navy. It is nevertheless true, not only of the United States Navy, but of every navy, that officers are sometimes influenced, perhaps unconsciously, by personal considerations. They have the power to seize. The law gives them under certain circumstances the right to seize and send in for adjudication. For reasons which have been found satisfactory by the Government in the past, they are given a certain personal interest in such seizures. There is therefore an inducement held out to make them. This being the case, it is but just that as the captors profit by successful seizures, they should bear the loss of an unsuccessful one. Under Section 4632 of the Revised Statutes "all vessels of the navy within signal distance of the vessel or vessels making the capture under such circumstances and in such conditions as to be able to render effective aid if required, shall share in the prize."

The aggregate proceeds of property already condemned as prize during the war with Spain amount to $716,662.35.

Doubtless the officers of the *Marblehead* and of the whole squadron at Guantanamo, under the section before quoted, participate in the distribution of this amount. There would seem to be manifest justice, in awarding damages to the claimant. As between the captors and the United States, the Government will undoubtedly deal justly with the captors.

Doubtless in some cases, as in the *Olinde Rodri-*

guez, circumstances of suspicion are so grave that the Court will compel the claimant to bear the costs and expenses of the cause. But where such circumstances do not exist, justice requires that claimant should recover the damages growing out of the seizure.

The Glen, Blatchf. Pr. Ca., 375.

In the *Juffrow Maria Schroeder*, 3 C. Rob., 147, the Court says (p. 153):

"The captor takes at his own peril and on his own responsibility to answer in costs and damages for any wrongful exercise of the rights of capture."

The rule on this subject is clearly stated by Lord STOWELL, in *The Acteon*, 2 Dodson, 48, 51:

"The natural rule is, that if a party be unjustly deprived of his property, he ought to be put as nearly as possible in the same state as he was before the deprivation took place; technically speaking, he is entitled to restitution, with costs and damages. This is the general rule upon the subject, but, like all other general rules, it must be subject to modification. If, for instance, any circumstances appear which show that the suffering party has himself furnished occasion for the capture, if he has by his own conduct in some degree contributed to the loss, then he is entitled to a somewhat less degree of compensation, to what is technically called simple restitution."

By this test the right to damages in the present case is clear. The suffering party furnished no occasion for the capture, and did not by his own conduct in any degree contribute to the loss.

This case was followed by the Privy Council in *The Ostsee*, Spink's Prize Cases, 174, less fully reported 9 Moo. P. C., 150.

The test stated by this Court in the *Charming Betsy* (2 Cranch, 64), is "Was there probable cause for the seizure?"

Judge STORY, in the appendix to 2 Wheaton, p. 11, thus states the rule:

"If the capture is made without probable cause, the captors are liable for damages, costs and expenses to the captured."*

These damages are stated in claimant's petition, paragraphs 5, 6, 7, Record, pp. 9, 10. They were in brief the breaking up of its coasting trade in Jamaica. The claimant was deprived of the *Adula's* use from June 29 to November 14, 1898 (p. 247), at which latter date she was released by consent of the United States upon claimant's giving a stipulation for $50,000 (p. 247). She was originally appraised, July 30, 1898, at $80,000 (p. 23). The Government meanwhile offered her twice for sale at auction at the upset price of $55,000, but without a bid (pp. 50, 51, 242, 247).

Fifteenth.

This Court should reverse the decree and order appealed from, decree that the seizure, detention and condemnation were unlawful and remit the cause to the District Court for the purpose of assessing the damages which have been sustained by the claimant by reason of the unlawful capture, detention and condemnation of the vessel.

EVERETT P. WHEELER,
Of Counsel for Appellant.

---

*This appendix was republished in London with notes by Pratt, under the title "Notes on the Principles and Practice of Prize Courts." The passage referred to is at page 39 of this edition.

Historical Appendix Summary.

The following Historical Appendix shows:

I.--The war was commenced chiefly out of pity for a suffering people, an unusual state of affairs, but one which will become more common with advancing civilization. The President went so far as to issue an appeal to the religious and business elements of the community to aid the Cubans, and during the war enormous quantities of governmental supplies were distributed amongst them. The policy and conduct of the war was such as to assure private persons that any co-operation they might give by taking off refugees or otherwise would be welcomed by the government (p. 61).

This should be taken into account in determining what it was proper for a neutral vessel to do.

II.—As a natural consequence the government relaxed the strict law as to neutrals which prevailed in the Civil War, and declared its adhesion to the Declaration of Paris (p. 64).

III.—There was no blockade of Guantanamo Bay, as appears by the proclamation of blockade of June 27. The official documents appended show that the government did not blockade that port or consider it unfriendly, but desired to establish "*a naval station*" in which to coal and repair the Santiago fleet. Moreover, the port was not an unfriendly one for the surrounding country on June 29th was in the undisputed possession of the United States troops (p. 65).

IV.--The refugees from Santiago suffered intensely from starvation and exposure. Two hundred houses within the United States lines were invaded by 20,000 people. The telegrams sent by

the commanding general to the Secretary of War show that they seriously hampered the success of the campaign, (1) by causing him to delay bombardment through motives of humanity, and later accept a surrender on terms; (2) by exhausting army supplies and medical help at a time when there was not enough for United States troops, and by becoming a plague centre to disseminate disease (p.68).

To prevent the *Adula* taking away a large number of these refugees was not merely a military blunder but an act wholly incompatible with the motives and policy of the war.

Historical Appendix.

I.

Conditions in Cuba which led to the Spanish War and object of that War.

Message of the President to Congress on the Relations of the United States to Spain by reason of Warfare in the Island of Cuba, April 11, 1898:

P. 3.

"Our people have beheld a once prosperous community reduced to comparative want, its lucrative commerce virtually paralyzed, its exceptional productiveness diminished, its fields laid waste, its mills in ruins, and its people perishing by tens of thousands from hunger and destitution."

P. 4.

"The policy of devastation and concentration, inaugurated by the Captain-General's bando of October 21, 1896, in the Province of Pinar del Rio, was thence extended to embrace all of the island to which the power of the Spanish arms was able to reach by occupation or by military operations. The peasantry, including all dwelling in the open agricultural interior, were driven into the garrison towns or isolated places held by the troops.

The raising and movement of provisions of all kinds were interdicted. The fields were laid waste, dwellings unroofed and fired, mills destroyed, and, in short, everything that could desolate the land and render it unfit for human habitation or support was commanded by one or the other of the contending parties and executed by all the powers at their disposal."

P. 6.

"On the 24th of December last, I caused to be

issued an appeal to the American people, inviting contributions in money or in kind for the succor of the starving sufferers in Cuba, following this on the 8th of January by a similar public announcement of the formation of a Central Cuban Relief Committee, with headquarters in New York City, composed of three members representing the American National Red Cross and the religious and business elements of the community."

P. 11. "The grounds for such intervention may be briefly summarized as follows :

First. In the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate. It is no answer to say this is all in another country belonging to another nation, and is therefore none of our business. It is specially our duty, for it is right at our door."

P. 13. " In view of these facts and of these considerations I ask the Congress to authorize and empower the President to take measures to secure a full and final termination of hostilities between the Government of Spain and the people of Cuba, and to secure in the island the establishment of a stable government, capable of maintaining order and observing its international obligations, insuring peace and tranquility and the security of its citizens as well as our own, and to use the military and naval forces of the United States as may be necessary for these purposes.

" And in the interest of humanity and to aid in preserving the lives of the starving people of the island I recommend that the distribution of food and supplies be continued, and that an appropriation be made out of the public Treasury to supplement the charity of our citizens."

On Thursday morning (April 11th) the Presi-

dent received, by previous arrangement, a visit from the Ambassadors of Great Britain, France, Germany and Italy, the Russian Chargé d'Affaires, and the Austrian Minister. Sir Julian Pauncefote, the British Ambassador, as dean of the diplomatic corps, presented to him a note signed by the six visitors in their representative capacity, appealing "to the feelings of humanity and moderation of the President and of the American people in their existing differences with Spain" and expressing a "hope that further negotiations will lead to an agreement which, while securing the maintenance of peace will afford all necessary guarantees of the re-establishment of order in Cuba."

The President's response echoed the hope of a peace secured by "the necessary guarantees for the re-establishment of order in the Island, so terminating the chronic condition of disturbance there, which so deeply injures the interests and menaces the tranquillity of the American nation by the character and consequences of the struggle thus kept up at our door, besides shocking its sentiment of humanity."

It concluded by asserting the unselfishness of our Government's purpose in fulfilling its "duty to humanity by ending a situation the indefinite prolongation of which has become insufferable."

Harper's Weekly, April 16, 1898.

Monday, July 18, 1898.

Letter from President McKinley to Secretary Alger:

"We come not to make war upon the inhabitants of Cuba, nor upon any party or faction among them, but to protect them in their homes,

in their employments, and in their personal and religious rights.

* * * * * *

All ports and places in Cuba which may be in the actual possession of our land and naval forces will be opened to the commerce of all neutral nations, as well as our own, in articles not contraband of war, upon payment of the prescribed rates of duty which may be in force at the time of importation."

II.

Adhesion to Declaration of Paris.

Message of the President of the United States; Third Session, Fifty-fifth Congress, December, 1898:

(P. 7.) "In further fulfillment of international duty I issued April 26th, 1898, a proclamation announcing the treatment proposed to be accorded to vessels and their cargoes as to blockade, contraband, the exercise of the right of search, and the immunity of neutral flags and neutral goods under enemy's flag. A similar proclamation was made by the Spanish Government. In the conduct of hostilities, the rules of the Declaration of Paris, including abstention from resort to privateering, have accordingly been observed by both belligerents although neither was a party to that declaration."

III.

Possession of Guantanamo Bay.

Message of the President of the United States, Third Session, Fifty-fifth Congress, December, 1898:

P. 12. "On June 10th, under a heavy protecting fire, a landing of 600 marines from the *Oregon*, *Marblehead* and *Yankee* was effected in Guantanamo Bay, where it had been determined to establish a naval station.

"This important and essential port was taken from the enemy after severe fighting by the marines, who were the first organized force of the United States to land in Cuba.

Annual Report, Secretary of the Navy for 1898.

P. 12. "On June 7, the *Marblehead* and *Yankee* took possession of the lower bay of Guantanamo as a harbor of refuge for the fleet, and on June 10, the first battalion of marines was landed there and went into camp. For three days and nights these men, supported by the *Marblehead* and *Dolphin*, fought almost constantly. The position which they defended was a most important one for the fleet, as it was necessary to have near at hand a harbor in which ships could be coaled and repaired in safety."

Report of Colonel Commandant of U. S. Marine Corps (1898, p. 8).

"The *Panther* sailed from Key West for Cuba on June 7, 1898, and arrived at Santiago de Cuba on the morning of the 10th. On the same day, at 1

P. M., the ship arrived at Guantanamo Bay, Cuba, and at 2 P. M. of that day the battalion landed, with stores, and prepared to go into camp. On the 11th the camp was attacked by a much superior force of Spaniards, and from that time until the 14th the battalion was constantly under fire, and repulsed the enemy on every attack. The holding of the position at Guantanamo Bay was of the utmost importance to the navy, as it was the only harbor where the vessels could seek shelter during the hurricane season. Owing to the dense undergrowth, affording safe shelter to the Spanish sharpshooters, it would have been impossible for the vessels, by shelling the shore, to keep the enemy from harassing those on board the ships with their Mauser rifles to such an extent as to make it dangerous for them to remain there. The report of Colonel Huntington, from the organization of the battalion until its return from Cuba, is appended, and it is respectfully requested that it may be printed as a part of this report. Also appended is a report of Captain Geo. F. Elliott, of the battalion, who was sent out on June 14 with a detachment of two companies of the battalion, and fifty Cubans, for the purpose of destroying a well at Cuzco, about six miles from the camp, which was the only water supply of the enemy within twelve miles. This small force attacked and defeated a body of about 500 Spaniards and accomplished the destruction of the well."

Ibid., p. 30. From report of Commander McCalla :

To Admiral Sampson :

"I have the honor to inform you that on the 14th inst., at the suggestion of Col. Laborde, the Cubans under the command of himself and Lieutenant-Col. Thomas, supported by two companies of marines, under the command of Captain Spicer

and Lieutenant Elliott, routed the force of about three hundred Spaniards stationed in the pass between the marine camp and the south coast. * * * "

"The object of the movement was for the purpose of relieving the pressure on the marine camp by an offensive movement, and it was, I believe, entirely successful."

A somewhat more detailed account will be found in Morris' "War with Spain" (pp. 218, 219, 224).

"The Fall of Santiago."

BY THOMAS J. VIVIAN.

P. 71. "The infliction of these two blows" (the capture of the Spanish signal station, blockhouse, and water supply, by Captain George F. Elliott, on June 14th, and the destruction by the fleet of the fort and earthworks at Caimanera on June 16) "taught the Spaniards their lesson, and from that time on, the outer bay of Guantanamo and the hills overlooking Fisherman's point were as placid and untroubled as a summer resort. A varying number of colliers lay at anchor within Fisherman's point, the *Panther* was anchored close beside the camp, the *Solace* rode in the smooth sheltered waters of the bay, the *Marblehead* as flagship of the station steamed here and there, the cable office was re-established and officially known as Pleya del Este, vessels from the blockading squadron came and went, rowboats and launches moved rapidly about, no Spaniard was to be seen, and that which was the theatre of a seven days' continuous performance of unrest, distress and bloodshed, became so peaceful that the captured Spaniard's letter dolefully describing the American occupation of Guantanamo Bay as the matter-of-fact conversion of the place into a harbor of rest exactly fitted the transformation."

IV.

THE REFUGEES FROM SANTIAGO, THEIR SUFFERINGS, AND THE DIFFICULTY EXPERIENCED BY OUR ARMY IN GIVING THEM FOOD.

Morris "The War with Spain" (pp. 286, 287).

"On July 3, at 8:30 A. M., General Shafter sent a flag of truce to the Spanish lines with a letter, in which he threatened to shell Santiago unless surrender was made, and gave until ten o'clock of the next morning for the removal of the women and children and the citizens of foreign countries. This was no empty threat, for the positions gained during the battle of the 1st and 2d had given his batteries command of the city, which lay under his guns. General Jose Toral, who had succeeded to the command of the Spanish forces on account of the serious wounding of General Linares, replied that he would not surrender, but would inform the consuls and people of the permission to remove. At the request of the foreign consuls, the bombardment was deferred until noon of the 5th, it being stated that fifteen thousand or more people, many of them old, would probably leave the city.

"The offer to escape was gladly taken advantage of by the people of Santiago, particularly by those of foreign birth, and during the next day there was a pitiful scene as the fugitives swarmed in hosts out of the city and trudged wearily over the road to El Caney, San Luis, and other towns in the vicinity. All day long the hegira continued, the fugitives struggling painfully onward under the blazing sun, and over a road in many places ankle-deep in mud. Tottering old men and women supported by their children, mothers carrying their infants, rich and poor, white and black, cultured

and ignorant, all fled in terror from the horrors of an expected bombardment that was never to come.

"Most of them made their way to El Caney, in which town, with accommodations for not more than five hundred people, over five thousand slept that night, crowded into the deserted houses and camping out on the verandas and in the rain-soaked streets. At dawn of the next day hundreds who had been overtaken on the road by the darkness began to come in, and the flood continued until a multitude of fugitives, estimated at fifteen thousand, overflowed the little town. They had not been permitted to bring food, and there was none in the town, so that those with money were as destitute as those without. Pathetic sights were to be seen on all sides. Ladies of good birth, supported by frail girls, came feebly into the town, seeking to hide their faces from the vulgar gaze of the ignorant and coarse who surged about them. Despair filled all countenances, hunger threatened the miserable multitude with death, the scene being a reproduction on a minor scale of the results of General Weyler's brutal reconcentration order.

"General Shafter was appealed to for the support of the miserable throng. This he was not well able to afford, but promised to give them a limited daily supply of food, the necessities of the troops and the difficulty of getting supplies to the front standing greatly in the way of his feeding this starving multitude. In this dilemma, Clara Barton and the Red Cross officials did noble work, making the most earnest efforts to feed the starving. But it was a difficult task, the tides and the surf standing greatly in the way of landing supplies, while transportation was very difficult to obtain, and the roads between the landing place and the front were almost impassable."

P. 292. "The impossibility of supplying the

many thousands of refugees at El Caney with army rations soon started a new movement towards the army base at Siboney, and within a day or two thousands of these miserables were plodding along the muddy road in the trail of the wounded, women and children, dragging wearily on, staggering and slipping under the burdens they bore, and ready to endure any privations to escape from the horrors of a bombarded city."

P. 296. "Bad as conditions were in the American camp, they were still worse in that of the refugees, for whom it had become next to impossible to provide food, and most of them were exposed without shelter to the drenching floods."

REPORT SECRETARY OF WAR, VOL. I, PART II, p. 566.

Gen. Breckenridge's Report—Inspector-General, U. S. A.

"Permission was given for the non-combatants to leave the city. They did leave in the following days to the number of perhaps twenty thousand, filling the neighboring villages and roads with destitute people, mostly women and children. It then seemed to fall to our lot to see that these people did not starve in a desolate country, and to be as much our duty to take care of these people whom our policy had driven from their homes, as it was for Spain to feed the reconcentrados whom they drove from their homes under their war policy. The task was not insignificant."

OFFICE NAVAL INTELLIGENCE WAR NOTES, No. 1.

BATTLES AND CAPITULATION OF SANTIAGO DE CUBA, BY LIEUTENANT JOSE MULLER Y TEJEIRO.

(P. 33.)

"I do not know what news may have reached

the Peninsula about the conditions at Santiago de Cuba. It is possible that the people believe there that only certain articles of food were lacking; if that is the case, they are greatly mistaken. People here have suffered from actual hunger, and many persons have starved to death, although the population has been greatly decreased, since whole families had left prior to the 21st day of April. I, myself, saw a man who had died of hunger in the entrance of the Brooks House opposite the captaincy of the port—died because he had nothing to eat."

(P. 146).

"Many of those who emigrated were people of wealth, women not accustomed to such fatigues and hardships, which fear and terror alone enabled them to bear.

"Being convinced, though I do not know why they should have been, that their absence would not be for the more than sixty or seventy hours at most, the majority of them had nothing with them but the clothes on their backs and a little underclothing, and no provisions except what they could carry themselves;

"I have been told, not by one person alone, but by many who were there and with whom I have talked, that there were no less than eighty people in any one house, and in some of them as many as two hundred. As in the cemetery, each person had no more space than he or she occupied; and thus they were housed together, men and women, children and old people, white persons and black.

"The provisions which were calculated for three days at most were naturally soon exhausted, and this is probably the only instance in the nineteenth century when money was looked upon with disdain and when gold was of no value. Trading was going on, it is true, but it was exchanging rice for coffee, hardtack for beans, or sugar for codfish.

"The bodies of those who had been killed on the 1st of July had only partly been buried, and the houses in that portion of the town which had been shelled were riddled with bullets, and, therefore, leaking everywhere. Carcasses of horses and other animals, even corpses of persons, were thrown into

the river, and people washed their dirty clothes and bathed in the water, which was all there was to drink. Most of the people lived on mangoes and mamoncillos, and it is no wonder that malaria, fevers, and dysentery broke out and assumed alarming proportions.

"The houses had no sanitary provisions of any kind, and as the doors were kept closed in order to prevent new invasions, the atmosphere was terrible. The children, sick from lack of nourishment or from taking food which they could not digest, were crying day and night, and quiet or rest became impossible.

"The faces of those who died were covered with a sheet or handkerchief, and the living remained by the side of the dead bodies, knowing that, if they should leave their places, others would come to occupy them.

"Why go on? I might write a hundred chapters and still not give an idea of the suffering during those days; suffice it to say, that El Caney, which was a town of 200 houses, was invaded by 20,000 people, who had counted on being there two days and who remained eleven, namely, until the 16th.

"Those eleven days at El Caney have caused more victims in Santiago than the three years of war; for the epidemic that broke out still (August 10, 1898), continues. When the inhabitants of the city numbered 45,000, there were, on an average, not over five deaths a day; and now, that the number of inhabitants is reduced to 30,000, there are not less than fifty a day. The house that does not contain one or more sick is an exception, and people who are well and hearty one day are buried a day or two later. The physicians cannot attend all the sick, and the dead are carried to the cemeteries by members of their own families. The city wears that stamp of sadness and absence of life which is the mark of great calamities, and we hear nothing but wailing and sobbing."

THE SANTIAGO CAMPAIGN, BY GEN. JOSEPH P. WHEELER.

P. 245.

HEADQUARTERS CAVALRY DIVISION,
IN FRONT OF SEVILLA, ON SANTIAGO ROAD,
June 25th, 1898.

To Gen. Shafter:

"I have just seen two negro boys who left Santiago this morning (Saturday). They report that the soldiers and citizens are very short of food. The soldiers and officers have seized all the food in the shops. They are killing young horses for food, and in the hospitals are subsisting on bread made of rice flour."

WHEELER.

P. 255.

HEADQUARTERS 5TH ARMY CORPS,
June 27th, 1898.

My dear Gen. Wheeler:

* * * "I hope your scheme of sending spies into Santiago has worked. I also understand that a large number of poor people came out yesterday and are within the lines. Of course they will be received, as we can't drive starving people back."
* * *

"I am shipping out stores as fast as possible; ammunition, forage and rations."

W. R. SHAFTER.

(P. 111.)

July 3d, 1898, 8:30 A. M.

Gen. Shafter writes to the Spanish Commander at Santiago:

"I shall be obliged, unless you surrender, to shell Santiago de Cuba. Please inform citizens of foreign countries and all women and children that

they should leave the city before 10 o'clock to-morrow morning."

REPORT SECRETARY OF WAR, VOL. I, PART I.

Official correspondence relating to surrender.

P. 105:

Gen. Shafter to the Spanish commander, July 3d, 1898:

"In consideration of the request of the consular officers in your city and in the interest of the poor women and children who will suffer very greatly by their hasty and enforced departure from the city, I have the honor to announce that I will delay such action (bombardment) solely in their interest, until noon on the 5th."

P. 114:

Gen. Shafter to Secretary of War, July 9, 1898:

"I forwarded General Toral's proposition to evacuate the town this morning" (a proposition to march out with arms and baggage, and not be molested before reaching Holguin). "Since then I have seen the general officers commanding divisions who agree with me that it should be accepted.

"I.—It releases at once the harbor.

"II.—It permits the return of thousands of women, children and old men who have left the town fearing bombardment, and are now suffering where they are, though I am doing my best to supply them with food.

"III.—It saves the great destruction of property

which a bombardment would entail, most of which belongs to Cuban and foreign residents.

IV.—It at once relieves the command while it is in good health, or operations elsewhere."

P. 116:

General Shafter to General Corbin, July 12:

"Great deal of suffering among the people of Santiago. Am doing my best to relieve it but not entirely successful."

P. 117:

Gen. Shafter to Gen. Corbin, July 12:

"Will any modification of the recent order be permitted? And as I have been perfectly satisfied that he (Toral) can be taken, but if he fights, as we have reason to believe he may, it will be at fearful cost of life, and to stay here with disease threatened may be as great loss from the cause. The suffering of the people who left the town is intense. I can only supply food enough to keep them from starving, and if blue rains continue I do not know how long I can do that."

P. 118:

Gen. Miles to Gen. Alger:

"The Spanish general to-day * * offers to surrender Santiago province, force, batteries, munitions of war, etc., all except the men and small arms. Under ordinary circumstances would not advise acceptance, but this is a great concession and would avoid assaulting intrenched lines with every device for protecting his men and inflicting heavy loss on assaulting lines. The siege may last many weeks. They have provision for two months. There are 20,000 starving people who have fled the city and were not allowed to take any food." * * *

THE SANTIAGO CAMPAIGN, BY GEN. WHEELER.

July 3d, 1898 Gen. Shafter telegraphed the Secretary of War at Washington (p. 114):

"Situation has become precarious on account of difficulties of supplying the command with food, and the tremendous fighting qualities shown by the enemy from his almost impregnable position."

And again (p. 115):

"General Pando has arrived at Palma, and the French Consul, with about 400 French citizens, came into his (Gen. Garcia's) lines yesterday from Santiago. Have directed him to treat them with every courtesy possible."

P. 313.

On the sixth Gen Wheeler writes Gen. Shafter:

"We are short of rations. Please hurry them up, and also please send us some stationery."

The General-in-Chief (Linares) telegraphed from Santiago to the Secretary of War (Madrid), July 12, 1898 (pp. 132, 133): * * *

"Cattle without fodder or hay. Fearful storm of rain, which has been pouring continuously for the last twenty hours. Soldiers without permanent shelter, their only food consisting of rice. * * * All the people have fled, natives as well as Spaniards, even those holding public offices, with few exceptions. Only the priests remain, and they wish to leave the city to-day, headed by their archbishop. These defenders do not start now a campaign full of enthusiasm and energy, but for three years they have been fighting the climate, privations and fatigues, and they have to confront now this critical situation, when they have no enthusiasm or physical strength. They have no ideals, because they defend the property of people who have de-

serted them, and of those who are the allies of the American forces."

July 14, 1898, Gen. Miles writes Gen. Shafter (p. 337:

"You are authorized to appoint Commissioners to draw up Articles of Capitulation. * * The attention of the Commissioners should be called to the importance of the return of the people that have fled from the city of Santiago, and the supplying them with food."

In the discussion as to the capitulation of the Spanish forces in Santiago the following statements appear (p. 155):

Paragraph 3 as amended:

"That the chief of the Spanish forces immediately after the confirmation of this agreement make arrangements for the entrance into the harbor of Santiago of the Red Cross ship *State of Texas*, a vessel sailing under the terms of the Geneva Convention, for the purpose of furnishing provisions to those starving in Santiago, without reference to nationality."

It appears that foreign ships had previously visited Santiago to take away refugees.

General Toral (p. 170) * * "said that even the foreign ships which came to take off their subjects had had to stop outside the port it not being possible for them to enter the harbor on account of the submarine defenses."

General Wheeler writes (p. 169):

"Lieutenant Miley said Gen. Shafter had had an examination made of the bridge of Aguadores and had found it would take at least a week to get the railroad in proper repair. It was his desire and purpose to feed the needy people in Santiago who

would be coming in in large numbers from the surrounding country, and he therefore desired that steps be taken, not after the signing of the capitulation, but immediately, to permit the Red Cross ship *State of Texas* to enter the harbor of Santiago."

Gen. Wheeler states (p. 169) that Gen. Toral replied that "he was, however, quite willing for the vessel to come quite close up to the harbor mouth, and for the stores to be placed on lighters, which being of a light draft could pass over the mines without danger."

Gen. Wheeler writes, P. 184:

"Some further idea of the desolation of the country may be formed from the fact that during the whole of our march from Siboney on the coast to the outskirts of the city of Santiago not one single house was standing, nor one acre under cultivation."

Gen. Wheeler continues (P. 191):

"El Caney is a very ordinary town of some three or four hundred people. * * * When the commanding general of Santiago notified the residents that the place would be bombarded, twenty-two thousand people left the city, eighteen thousand of them congregating in this town and vicinity, while the others scattered around in neighboring fields. Their sufferings were fearful. Notwithstanding the great efforts on the part of the Government and the Red Cross to feed them, there was so little organization that many of them were traveling to and fro to various places in the hope of bettering themselves, and many suffered seriously from want of food. It was a pitiful sight to see men, women and children * * * tramping through the mud and begging for something to eat."

Even as late as July 24th, 1898, Major Garlington, the Inspector-General of the Cavalry Division, reports (pp. 359, 360):

"The officers and men are in urgent need of almost everything except arms and ammunition. I have verbally already reported the condition of the enlisted men as to clothing, and I understand requisitions are being prepared * * they have no reserve supply on the transports and have only what they have on their backs. * * Yesterday some fresh beef was issued to the division, the first since leaving Tampa on the 13th of June. A more varied diet is urgently needed, beans and rice owing to limited transportation having not been regularly issued, and since leaving the transports the command has been living on hard-tack, bacon, sugar and coffee. It has been and is now extremely difficult to get any officers' stores. * * * On the 23d there were 201 cases in hospital. There was no tentage except shelter tents; no cooking utensils except two camp kettlesand the meat ration can; no food except straight rations. * * *

"The question of transportation is a very serious one, and if the number of pack mules assigned to this Division cannot be increased from those now on the island * * * at least 250 mules, with proper number of civilian packers, should be shipped from the U. S. at once. As the matter now stands only one day's supplies can be furnished, without taking into consideration any change of camp, stores or anything that would interrupt the ration supply."

"The Red Cross,"
Clara Barton.

P. 577.

"The city (Santiago) was literally without food. In order to clear it for defense, its inhabitants had

been ordered out, ten days before, to El Caney, a small town of five hundred people, where it was said thirty thousand persons were gathered, without food, shelter or place of rest. Among these were the old-time residents, the wealthy and the best people of Santiago. Its British consul, Mr. Ramsden, and his family, were of them, and the care and hardships of that terrible camp cost his life. A message from the headquarters of General Shafter, telegraphed to us even after leaving Siboney, said: "The death rate at El Caney is terrible. Can you send food?"

"Word went back to send the thirty thousand refugees of El Caney at once back to Santiago. We were there and could feed them, that the *State of Texas* had still on board twelve hundred tons of supplies for the reconcentrados. That day poured upon us all that had strength to make the journey, of the thirty thousand starving wrecks of El Caney. If there were any at night who had not received food, we did not know it."

P. 579.

"The discharge of the *State of Texas* of over 12,000 tons commenced at 6 P. M. Monday, July 18. 125 stevedores were employed and paid in food issued as rations. On July 22d the ship left for New York.

"During that time the people had returned to Santiago, numbering 30,000, and all were fed—ten thousand a day, from the soup kitchen of Mr. Michaelson, the others with bread, meat, and milk. * * * All transient persons are fed at the kitchen, the food being provided by the Red Cross."

THE "ROUGH RIDERS," BY THEODORE ROOSEVELT (pp. 196, 197).

"On the morning of the 3d the Spaniards had

sent out of Santiago many thousands of women, children, and other non-combatants, most of them belonging to the poorer classes, but among them not a few of the best families. These wretched creatures took very little with them. They came through our lines and for the most part went to El Caney in our rear, where we had to feed them and protect them from the Cubans. As we had barely enough food for our own men the rations of the refugees were scanty indeed and their sufferings great. *Long before the surrender they had begun to come to our lines to ask for provisions and my men gave them a good deal out of their own scanty stores, until I had positively to forbid it and to insist that the refugees should go to headquarters; as, however hard and merciless it seemed, I was in duly bound to keep my own regiment at the highest pitch of fighting efficiency.*

"As soon as the surrender was assured the refugees came streaming back in an endless squalid procession down the Caney road to Santiago. My troopers, for all their roughness and their ferocity in fight, were rather tender-hearted than otherwise, and they helped the poor creatures, especially the women and children, in every way, giving them food and even carrying the children and the burdens borne by the women."

"The Cuban and Porto Rico Campaigns."
Richard Harding Davis.

P. 172.

"For six days (after June 24) the army was encamped on either side the trail * * the pack-trains passed up and down between them, carrying the day's rations. The trail was a sunken wagon road, where it was possible, in a few places, for two wagons to pass at a time, but the greater dis-

tances were so narrow that there was just room for a wagon or a loaded mule-train to make its way. The banks of one trail were three or four feet high, and when it rained it was converted into a huge gutter, with sides of mud, and with liquid mud a foot deep between them."

"THE FIGHT FOR SANTIAGO."

BY STEPHEN BONSAL.

Pp. 352, 353:

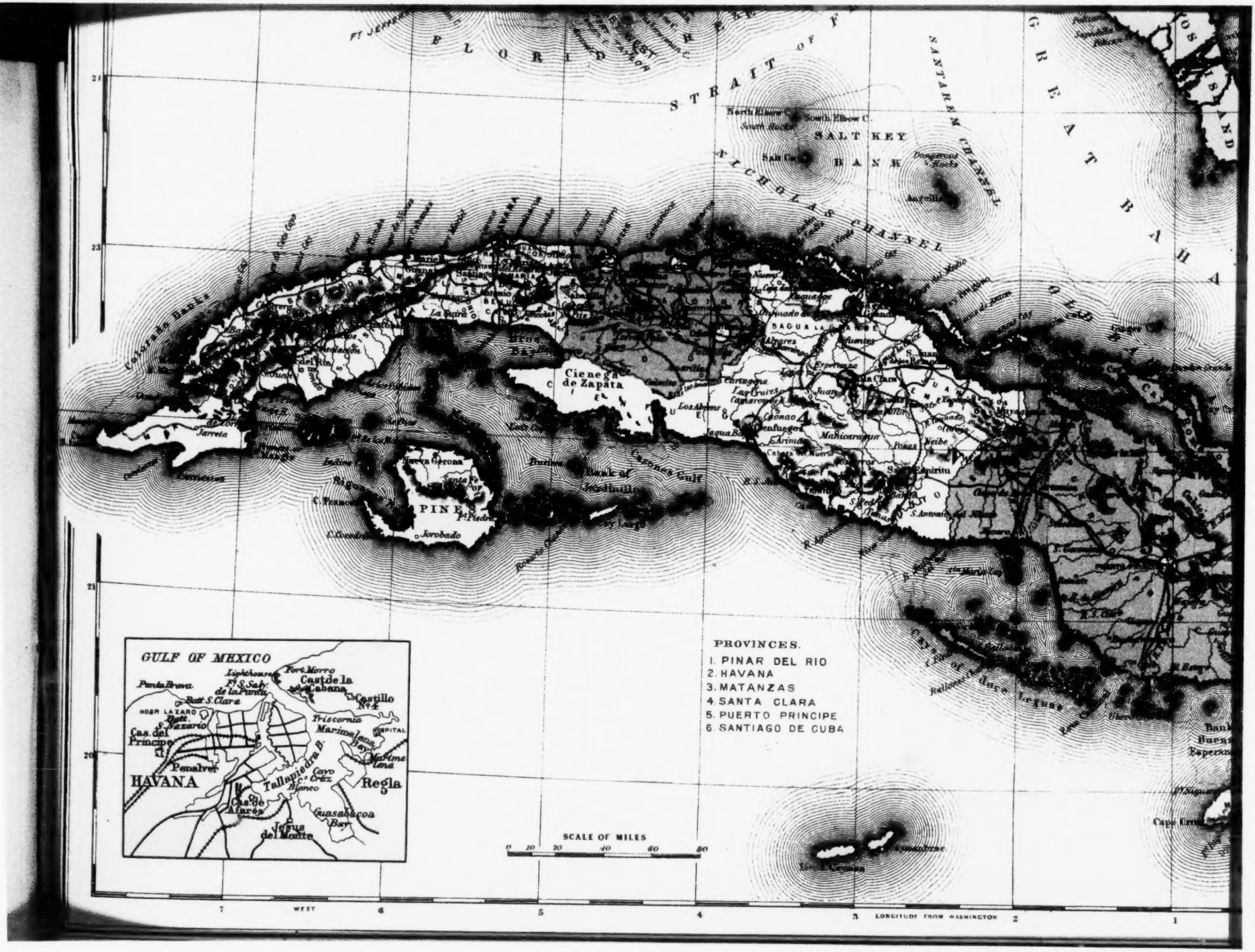
"There were two hundred houses in Caney, more than half of them being simply straw-thatched bohios. They were one and all crowded before the great exodus of to-day began. Upon this village more than twenty thousand people now directed their steps, and, of course, there was nothing to eat in Caney for man or beast except the rations which could be spared by the army. For several days rations were served out under th· direction of Captain Stewart Brice, of the headquarters staff, and of Captain Allen, of the Second Cavalry, to the number of two thousand per day, but after the terrible rains of the 10th and the 11th we were not able to bring up so many. The great majority of the refugees were reduced to living upon mangoes and mamoncillas, and to sleeping in the woods under the shelter of the trees, and soon, of course, fevers of all kinds and dysentery broke out and began to assume alarming proportions."

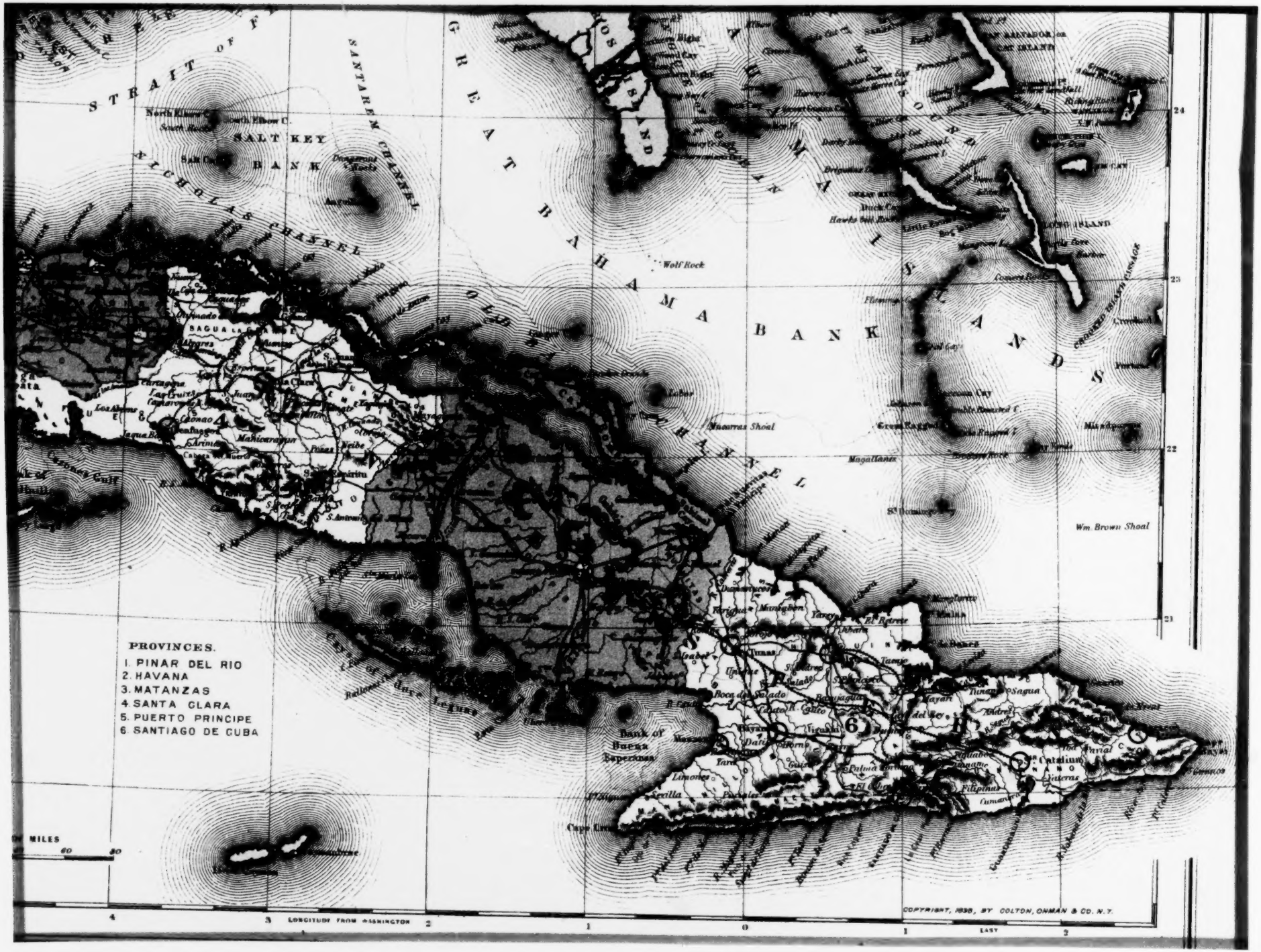
"Rode to Caney at six o'clock in the morning. Met strange line of refugees on road—some on foot, some in Cuban carts, some half-clothed, some not clothed at all, with their household pets, dogs and parrots. Some women wore diamond rings on their fingers, while their delicate shoes were torn off by the rough stone of the road they had come. Many lay exhausted on the ground, unable to move."

P. 354:

"I saw refined, handsome women who had never

walked or gone out except in a carriage, after the Cuban custom, now compelled to walk two leagues in the hot sun, many of them with the paper soles torn away from their shoes and with bleeding feet, and not a few of them with little babies not more than ten or fifteen days' old in arms. There was a very refined American lady among them, the widow of a Cuban doctor. She had come out of the city with her daughter, a delicate girl, and now regretted having done so. Another time, she said, she would remain at home and take her chances of the bombardment. Among them was also the United States consular agent from Baracoa. He said that he had had to observe very diplomatic behavior during the siege. There was also a Brooklyn girl, who was looking along the road for her brother, who, she said, had volunteered to fight to free Cuba."


FLORIDA
STRAIT OF
SALT KEY BANK
SANTAREM CHANNEL
GREAT BAHAMA
NICHOLAS CHANNEL
Cienega de Zapata
PINE
Jovabado
Tarreta
Colorado Banks
Jardinilla
Cayo Romano
Cayo Fragoso
Cayo Coco
Cayo Sabinal
Cayo Guajaba
Cayo Paredon Grande
Cayo Cruz del Padre
Cayo Bretal
Cayo Largo
Isla de Juventud
Cape Corrientes
Cape Frances Viejo
Cape Cruz
Cape Maisi
Guantanamo
Baracoa
Bahia Honda
Mariel
Matanzas
Cardenas
Sagua la Grande
Caibarien
Remedios
Sancti Spiritu
Ciego de Avila
Morón
Nuevitas
Gibara
Holguin
Manzanillo
Bayamo
Santiago de Cuba
Guantanamo
Trinidad
Cienfuegos
Batabano
Colon
Sagua la Grande
Esperanza
Santa Clara
Caibarien
Remedios
Sancti Spiritu
Ciego de Avila
Morón
Nuevitas
Gibara
Holguin
Manzanillo
Bayamo
Santiago de Cuba
Guantanamo
Baracoa
Trinidad
Cienfuegos
Batabano
Colon
Matanzas
Cardenas
Mariel
Bahia Honda
Guane
Pinar del Rio
Consolacion del Sur
Candelaria
San Cristobal
Los Palacios
Guira de Melena
Alquizar
Artemisa
Guanajay
Bejucal
Güines
Jaruco
Santa Cruz del Norte
Matanzas
Cardenas
Colon
Jovellanos
Limonar
Union de Reyes
Aguada de Pasajeros
Rodas
Palmira
Cienfuegos
Cruces
Lajas
Santa Isabel de las Lajas
Rancho Veloz
Camajuani
Placetas
Santa Clara
Caibarien
Remedios
Sancti Spiritu
Jatibonico
Ciego de Avila
Morón
Chambas
Bolivia
Nuevitas
Las Tunas
Jobabo
Manati
Gibara
Holguin
Mayari
Sagua de Tanamo
Guantanamo
Baracoa
Maisi
Cape Maisi
Cape Cruz
Manzanillo
Bayamo
Yara
Santiago de Cuba
Caney
Jiguani
Palma Soriano
Contramaestre
Songo
Dos Rios
Victoria de las Tunas
Puerto Principe
Nuevitas


PROVINCES.
1. PINAR DEL RIO
2. HAVANA
3. MATANZAS
4. SANTA CLARA
5. PUERTO PRINCIPE
6. SANTIAGO DE CUBA
STRAIT OF FLORIDA
GREAT BAHAMA BANK
SALT KEY BANK
NICHOLAS CHANNEL
SANTAREM CHANNEL
CROOKED ISLAND PASSAGE
Wolf Rock
Wm. Brown Shoal
Bank of Buena Esperanza
Cape Cruz
Caicaimo
Filipinas
Limones
Sevilla
Pocoles
Manzanillo
Bayamo
Holguin
Nuevitas
Sagua
Remedios
Cienfuegos
Trinidad
Matanzas
Havana
Mariel
Pinar del Rio
Batabano
Isle of Pines
Cayman Islands
Caicos Islands
Turks Islands
Mayaguana
Inagua
Crooked Island
Long Island
Acklins Island
Rum Cay
San Salvador
Watling Island
Great Inagua
Mira Por Vos
Hogsty Reef
Silver Cay
Navassa Shoal
Magallanes
Caicos Passage
Old Bahama Channel
Yucatan Channel
Florida Straits
Gulf of Mexico
Caribbean Sea
Atlantic Ocean
MILES
60
80
LONGITUDE FROM WASHINGTON
EAST
COPYRIGHT, 1856, BY COLTON, ONMAN & CO. N.Y.

Office Supreme Court U. S.
FILED
NOV 2 1899
JAMES H. McKENNEY,
Clerk.

No. 167.
Reply Br. of Wheeler for Appl.

Filed Nov. 2, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 167.

THE STEAMSHIP "ADULA," &c.,

vs.

THE UNITED STATES.

REPLY BRIEF.

EVERETT P. WHEELER,
Of Counsel for Appellant.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 11-2-'99

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 167.

THE STEAMSHIP "ADULA," &c.,

vs.

THE UNITED STATES.

REPLY BRIEF.

STATEMENT.

The argument for the captors is based upon three propositions:

1. That there was a technical violation by the *Adula* of the law of blockade, which justified the court below in decreeing her forfeiture.

2. That there was an actual intent on her part to run a blockade lawfully established, and that the charter and instructions were fraudulent.

3. That by the charter to Solis she became enemy's property, so as to justify her seizure.

We reply:

1. The *Adula* violated no law.

2. She was guilty of no fraud.

3. She never became enemy's property.

FIRST.

The Adula Violated No Law.

1. Guantanamo bay (or Caimanera, as the village on the shore is called) was not blockaded. It was in the full and undisturbed possession of the United States forces and used by them as a coaling station. Neutral vessels could therefore lawfully go there in the absence of express prohibition from the President. The President had the right, as a war measure, to blockade ports occupied by the Spanish forces. But he never undertook to blockade ports occupied by our own (see Principal Brief, p. 64) or to prohibit intercourse with our Cuban friends.

The captors fail to discriminate between entrance to the bay, which was controlled by our forces, and the landing and passing through our lines. The former was lawful to neutrals without express consent. For the latter, doubtless the consent of the naval and military authorities was required. It might be given or withheld; but to ask it was no crime and incurred no forfeiture.

The mere congregating of vessels in a port, more especially

when that port belongs to a friendly island only partly occupied by foreign forces, does not in itself constitute a blockade. There must also be an intent to institute it, and if there was one here we must suppose that Admiral Sampson objected to having merchant vessels call at Guantanamo. As appears from the captors' brief, as well as the appendix to the brief of the appellant, there were several ships in the harbor, and since June 15th the shores were in the undisturbed possession of the United States marines, the Spaniards having been expelled from that part of the country by an inland expedition.

It is admitted that the President, when the ships were ordered to Guantanamo, said nothing about blockade, but directed the movement for the sake of establishing a port in which the vessels could be coaled, repaired, and equipped.

Such being the state of facts, can any one doubt that it would be advantageous that merchant vessels should have free access to the port? Ships knowing of the existence of such a station might bring and offer supplies for sale, and this might be of great assistance to the Government. It would certainly have been bad policy to establish a hard and fast rule of law that coming within speaking distance of such a station should in itself be a breach of blockade.

On the other hand, it will hardly be seriously contended that the United States could be hurt by the approach of such a vessel as the *Adula*. Captain McCalla could not think it possible that she should get past his fleet, and if she did there were no enemies on the shore. The United States marines were in possession.

We therefore maintain that it was the policy of the

United States to let merchant vessels have free access to their coaling and repairing station.

But if the Government thought otherwise, some notice of that fact should have been given. Notice of a blockade does not mean notice that vessels are in the neighborhood of a port, but that they are there for the purpose of preventing access to it. When vessels might reasonably think that access was not denied, proclamation must be made to make the blockade effective.

Lieutenant Anderson's statement that there was a blockade is only his conclusion. The facts he gives show occupation. It may be Admiral Sampson June 8, 1898, ordered a blockade (p. 149). That was before our troops had obtained possession of the upper bay and shore, and before the President's proclamation of June 27, which defined the limits of blockade.

2. Under the facts of the war with Spain, the Cubans were friends. They were declared by act of Congress "free and independent." The war was not with them, but with the Spanish forces. Of these forces, even in Santiago, General Linares said (Principal Brief, p. 76): "They have no ideals, because they defend the property of people who have deserted them, and of those who are the allies of the American forces."

Therefore communication with the Cubans was lawful, subject to the right of the President to prohibit it temporarily as a war measure.

3. The captors argue that the town of Guantanamo was blockaded; but the *Adula* was not bound for the town. That was inland. She could not sail to it (p. 17). She was

bound solely for Guantanamo bay. As to the town itself, it was a Cuban town. The Spanish forces had been defeated and driven away by United States troops, united with Cuban troops (Principal Brief, pp. 65–67).

4. The President's proclamation, issued only two days before the capture of the *Adula*, is the best possible proof that the Executive never intended to prohibit neutral vessels from entering Guantanamo bay. The statement that other ports were blockaded and the omission to mention this is in effect a declaration that it remained open to neutrals. No intermediate emergency had arisen authorizing a naval officer to make a proclamation for himself. It would be most dangerous to allow a naval officer to seize and forfeit neutral vessels for approaching a port which immediately before the President had considered and omitted from his blockade proclamation. This the naval commander had no power to do.

2 Halleck Int. Law, 184, and authorities cited.

Cases cited, Principal Brief, p. 15.

Captors' argument as to notice of the blockade is really based on the erroneous assumption that Guantanamo was within the limits of blockade stated in the proclamation. Lieutenant Anderson supposed it was (p. 161), and Solis was so informed on board the *Adula* (p. 108), probably by Anderson. But the fact is the reverse.

5. The only authority cited by the captors to show that Guantanamo was a blockaded port is The Circassian, 2 Wall., 135. That case, as Wharton points out, volume 3,

International Digest, § 359, is doubtful law, being in conflict with a previous decision of this court (Thirty Hogsheads *vs.* Boyle, 9 Cranch, 191), and with a subsequent decision of an international tribunal under the treaty of Washington; yet even this case admits the proposition maintained by claimant. It was decided on the fact that the blockaded port was not really in the possession of the United States. The west bank was still held by the Confederates and the city was hostile. It also held that this question of fact was there conclusively determined by the proclamation of the President declaring New Orleans blockaded and a proclamation made after the capture opening the port from a specified date. It distinguished the case from that of a *de facto* blockade, which is the most that is claimed for Guantanamo.

6. So far as Santiago is concerned, how could neutrals know, except by inquiry, the nature of the blockade? The proclamation was silent. To use the language of Lord STOWELL in the *Juffrow Maria Schroeder*, 3 C. Rob., 147, 154:

"A blockade may be more or less rigorous, either for the single purpose of watching the military operations of the enemy and preventing the egress of their fleet, as at Cadiz, or on a more extended scale, to cut off all access of neutral vessels to that interdicted place, which is strictly and properly a blockade, for the other is in truth no blockade, as far as neutrals are concerned."

So Hall on International Law, 4th ed., p. 719.

The natural inference from the failure to specify Santiago was that the blockade there was of the former character.

Foreign ships had been allowed to anchor off the entrance and take off refugees (Principal Brief, p. 77). How illegal, then, was the seizure of the *Adula* for approaching Guantanamo to ask leave to go to Santiago.

It must always be borne in mind that the probability when the *Adula* sailed was that Santiago would soon be bombarded; that this was the place from which refugees would probably most desire at once to escape; that whatever journeying from place to place was to be done by the *Adula* would be under the supervision of the United States naval commanders (Record, p. 27, parag. *c*). It was therefore proper to send her first to Guantanamo bay, which was in possession of the United States, and there ask leave to go farther, and such were her instructions (p. 186).

7. The pass from the Spanish consul was obviously desirable to enable Solis, after obtaining permission from the United States, to open communication with the Spanish authorities within whose lines the refugees would probably be.

SECOND.

There Was No Fraud.

1. The presumptions are against fraud; none is proved.
   The Pegou, note to the Charming Betsey, 9 Cranch, 98
   2 Pistoye & Duverdy des Prises, 51.

2. The previous conduct of the *Adula* raises no presumption of fraud. On the contrary, it reinforces the presumption of honest intent. Twice she had been expressly employed by the United States Government; once she went

into Cienfuegos, which she had a right to do, as the blockade had been raised. The blockading vessels had sailed away to join the squadron arrayed against Cervera.

Record, pp. 26, 27, parag. *b*.

On every occasion she had gone for and brought away refugees, and only refugees. Once she landed some provisions, intended for passengers, to feed the starving people of Cienfuegos, our friends. This was meritorious. She had carried mails for the United States Navy and brought intelligence to our ships.

The newspaper report that she had brought off General Blanco's private secretary is unsupported by proof. It probably originated with some scurvy reporter who had been denied some favor he sought from the Atlas line. In any case it is unproven and untrue.

So far from the owners of the *Adula* having (as captors claim) desired "to engage in enterprises just as close as possible to the line of illegality," they kept as far as possible from it. They relied on the declaration of the United States made at the beginning of the war. They took their ship from her regular employment, and chartered her for objects to promote which the war was declared.

3. The previous conduct of Solis raises no presumption of fraud. He had been engaged in trade with the insurgents in the eastern provinces of Cuba, outside the "trocha" (Record, p. 29, parag. *j*). This also was meritorious. It aided the friends of the United States. There is not the slightest proof that he had ever attempted to enter a blockaded port.

4. The facts of the case establish innocence.

a. There was no concealment. The papers were shown the American consul and he was notified of the voyage.

b. The Atlas Company had no motive for fraud. By the terms of the charter it was to be paid at the same rate whether the *Adula* was permitted to enter the ports or not (Record, p. 11).

c. The *Adula* was not armed and could not force an entrance.

d. She was a slow boat, having a speed of only eight knots, and could not escape from our swift vessels.

e. The force at Santiago and Guantanamo was so overwhelming that the endeavor to elude it would have been an absurdity.

f. She approached this force in broad daylight, anchored, and whistled for a pilot.

g. She had no cargo. Her surplus of about sixty-six tons of coal was no more than enough to provide against emergencies and serve for ballast. A steamer that goes to sea without some margin of coal supply is unseaworthy.

h. Stress is laid on the alleged discrepancy between the *Adula's* position on the chart as it would have been by dead reckoning and as it was. The answer is that claimant offered to prove that this difference was caused by winds on the starboard side (the ship being high out of water) and by the westerly current (Record, p. 27, parag. c). Every prudent navigator allows for such conditions.

i. Stress is laid on the alleged sailing towards Santiago and then going towards Guantanamo. The answer to this is that claimant offered to prove that the captain sailed towards Santiago so as to ask leave from the commanding officer of the squadron to enter Guantanamo. He was in full sight, but no vessel came towards him. It was towards evening, and if he went further towards Santiago it would be too late for him to enter the bay of Guantanamo that night. The coast was rocky and not lighted, and the anchorage outside dangerous (Record, p. 27, parag. *d*).

j. In short, the allegations of fraud are disposed of by the fact that claimant offered proof which would explain every alleged circumstance of suspicion (Record, pp. 25–29). The court held the facts which were offered in evidence irrelevant (Record, p. 50). The decree can therefore be supported only on the ground that there was ground for forfeiture irrespective of intent.

k. It is especially unfair to lay stress on the depositions of Anderson, Ellenberg, and Gill, taken *de bene esse*. Claimant was denied the opportunity to offer evidence in rebuttal or explanation.

THIRD.

Enemy's Property.

Under a charter like the present (as shown at pages 40, 41 of the Principal Brief), Solis had no special ownership in the vessel. He had only a right to use her for a certain purpose, to wit, to bring away refugees, which was not a hostile, but a lawful and friendly purpose.

a. If he were an enemy the United States had a right to prevent this. Even if he were a friend they probably had the right and certainly the power. Solis and the owner both recognized this right. To exercise it required a simple negative; but it does not follow that the property of the neutral should be forfeited.

b. But Solis was not an enemy. He was a Cuban. Claimant offered to show that before the war broke out Solis owed allegiance to Spain, but that when it broke out he left the island of Cuba, "and had taken no part in hostilities against the United States, nor been in any particular an enemy of the same; but, on the contrary, had done all in his power while he remained in Cuba to befriend and assist citizens of the United States who were still in Cuba, and that he cast in his lot with the natives of Cuba, and was desirous that a stable government should be established in said island under the auspices of the United States" (Record, p. 28, parag. *h*).

FOURTH.

The captors having objected to the introduction of evidence on these points and obtained its exclusion, the case ought not to be sent back for proofs, but decided on the offer as a conceded state of facts. Captain Yeats is dead, the other witnesses are scattered, and the actual facts cannot now be proved as they could have been in July, 1898.

EVERETT P. WHEELER,
Of Counsel for Appellant.

SUPPLEMENTARY.

FIFTH.

Passport to Solis.

The cases cited by captors as to the effect of the acceptance by Solis of a passport from the Spanish consul have no application. Solis was not an American citizen. These cases are based avowedly on the rule that a citizen of one belligerent State must not during war trade with the enemy, because that tends to give the enemy aid and comfort.

See the cases themselves, and also—

1 Duer on Ins., 583, § 27 and note.

The Goede Hoop, Edw. Adm., 327.

This case contains an account of the licenses granted by the British during the war with Napoleon, and shows a practical relaxation of the rule as contended for here. One of these is printed in full in—

Everth *vs.* Tunno, 1 B. & Ald., 142.

In that case a license to trade was obtained both from the English and the French. This, as Duer points out in the note before cited, made the voyage lawful, even as between subjects of the belligerents. Such license from both was what Solis undertook to get and what the Atlas Company stipulated for; otherwise it was expressly agreed the ship should return to Kingston.

In short, the fallacy underlying the captors' briefs is that trade or intercourse between a neutral and a belligerent is unlawful. In fact, it is lawful, except where restricted by the law of blockade.

EVERETT P. WHEELER,
Of Counsel for Appellant.

No. 628. 167

Office Supreme Court U. S.
FILED
MAR 13 1899
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1898.

The Steamship "ADULA," etc., The ATLAS STEAMSHIP COMPANY, Claimant, etc.,
Appellant,
vs.
THE UNITED STATES.

No. 628.

The appellant concurs with the Solicitor-General in the motion to advance this cause and the other prize causes on the docket and assign them for early hearing. But the appellant submits that they should not be assigned for a hearing before the October Term, 1899. The Record in No. 628 in not yet printed. It is voluminous, and will require the preparation of a careful and well-considered brief, and the engagements of counsel are such that the necessary preparation cannot conveniently be made in time for an argument before May 15th.

Under these circumstances the appellant submits that it will be for the general convenience of all parties interested, and their counsel, that the causes should be assigned for hearing at an early day in October, 1899.

EVERETT P. WHEELER,
Counsel for Appellant.

No. 167. (Nov.)

Brief of Atty. Gen. for U. S.

Filed Oct. 30, 1899.

Office Supreme Court U. S.
FILED
OCT 30 1899
JAMES H. MCKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE STEAMSHIP ADELA, HER ENGINES, boilers, tackle, apparel, etc.; The Atlas Steamship Company (Limited), claimant, appellant,

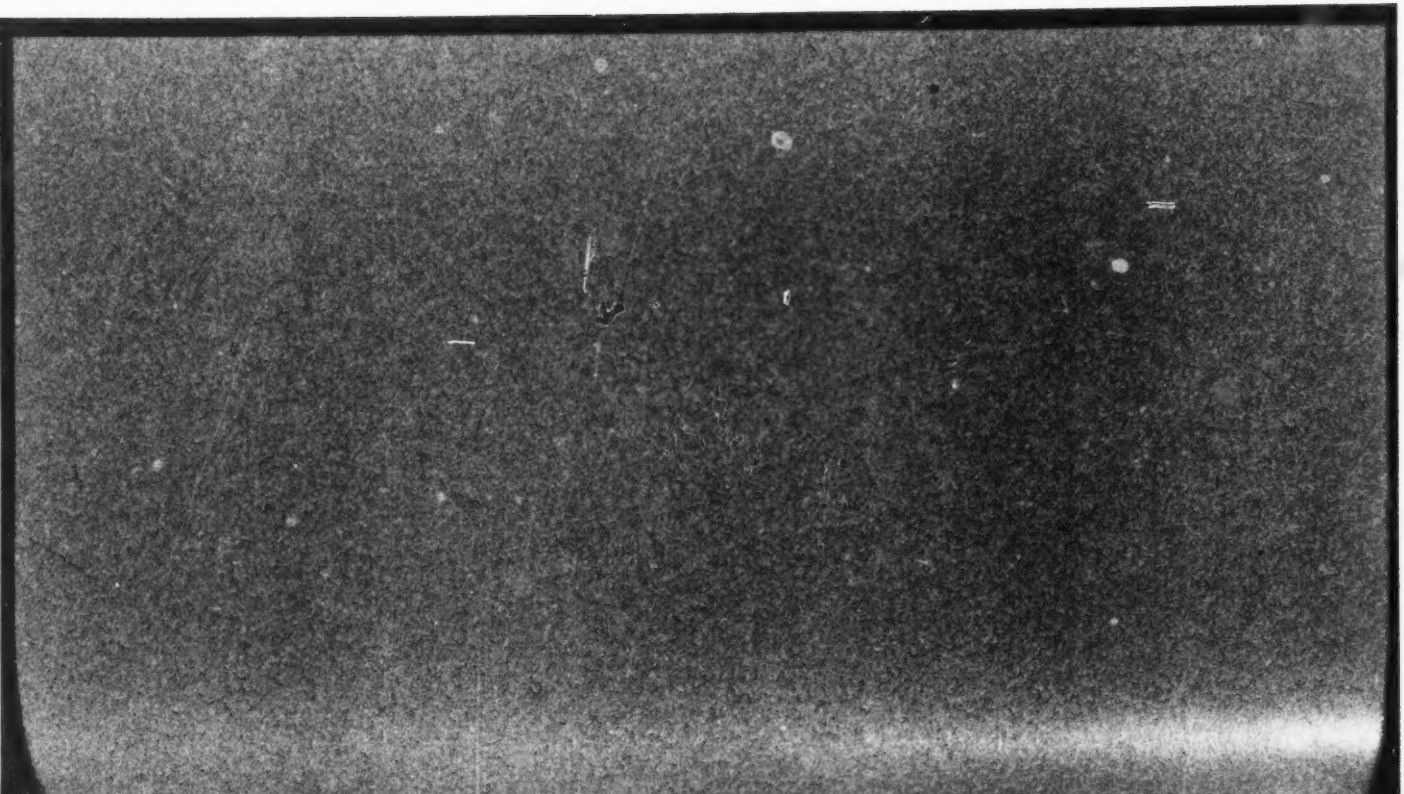
v.

THE UNITED STATES.

No. 167.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

BRIEF FOR THE UNITED STATES.



In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE STEAMSHIP ADULA, HER ENGINES, boilers, tackle, apparel, etc.; The Atlas Steamship Company (Limited), claimant, appellant,
v.
THE UNITED STATES.

No. 167.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The *Adula*, a British steamship, but under charter to a loyal Spanish subject, was seized on June 29, 1898, by the United States cruiser *Marblehead* for attempting to run the blockade established at Guantanamo Bay, Cuba. The vessel, when within half a mile of the entrance to the bay, was hailed by the *Vixen*, brought to, and directed into the harbor where the *Marblehead* and other war

vessels were lying, and shortly thereafter she was seized by order of the commander of the *Marblehead* and sent into the port of Savannah for adjudication. The libel, the claim on behalf of owners, and the answer of the owners to the libel were duly filed, and the depositions *in preparatorio* of the purser, the acting master, the charterer, the chief officer, two petty officers, and a sailor (pp. 88, 94, 103, 122, 129, 136, 116) taken before the prize commissioners from the 20th to the 22d of July, 1898. Upon this evidence, and upon the ship's papers and other evidence of a documentary character found on the ship by the captors, the vessel was condemned by the court on July 28 (p. 24). On the 25th of July the depositions *de bene esse* of Lieutenant Anderson, the prize master, and two of the crew of the *Marblehead* were also taken before the prize commissioners (pp. 143, 176, 180). Upon July 28 the claimant filed a motion to take further proof (p. 19), and supported it by an affidavit on behalf of the owners to which a certain statement and other documents were attached (pp. 25, 30 *et seq.*), which motion was duly answered by the United States (p. 40), with a tender of the depositions *de bene esse* by way of counter-showing (p. 48), and thereupon the court denied the motion by order filed August 15 (p. 49), and by opinion dated August 13 and filed August 18 (pp. 57–68) reaffirmed the decree of condemnation and the denial of the motion to admit additional testimony. The claimants thereupon took this appeal assigning 37 specifications of error (p. 238 *et seq.*).

Various orders of court having been made for the delivery of the vessel to the claimants upon stipulation

for value or for sale thereof, the former upon the claimants' petition (pp. 8, 21, 50—it appearing at p. 50 that the claimants formally declined to give a stipulation at the appraised value—and p. 242, by which it appears that the endeavor to sell at Savannah and at New York upon removal there in accordance with the statute was unsuccessful), the vessel was finally delivered to the claimants upon a stipulation for value in the sum of $50,000 (p. 247).

The court is respectfully informed, from sources *dehors* the record, that while the *Adula* was at New York awaiting the unsuccessful sale, in the custody of the marshal for the southern district of Georgia in the prize case, and after the decree of condemnation was entered, she caught fire and was salved by certain tugs, on behalf of the owners and crews of which an intervention was filed in the United States district court for the southern district of Georgia. Subsequently to the fire, the vessel was released to her owners upon the stipulation for value just referred to. Subsequent to the release, the United States, the claimants in prize, and the salvors stipulated that the stipulation for value in the prize case should stand as security for any claim which might be filed against the vessel up to the amount of the stipulation.

It is also the fact that the vessel itself recently foundered off the Jamaican coast.

The 37 assignments of error may be reduced to the following four propositions:

I. The *Adula* was not a Spanish ship for the purposes of this voyage, and her owners are not to be charged with any illegal intent or attempt on the charterer's part

which may appear. (Specifications II, III, IV, IX, X, XII, XIII, XVI, XVIII, XX, XXVII, XXVIII, XXIX, XXXI, XXXII, XXXIII, XXXV.)

II. The charterer was not engaged in running the blockade at Guantanamo or other ports on the south coast of Cuba, but in a meritorious undertaking to bring off refugees, which not only was not illegal, but was approved by the policy of the United States. There was no blockade of Guantanamo and the other Cuban ports in question, or at least none regularly established and effectively maintained or duly notified, and the claimants had no knowledge thereof. (Specifications V, VI, VII, VIII, XI, XVII, XVIII, XIX, XX, XXVII, XXVIII, XXIX, XXX, XXXII, XXXIII, XXXIV, XXXV.)

III. Further proof should have been allowed. (Specifications XXIII, XXIV, XXV, XXVI.)

IV. Certain evidence should not have been considered. (Specifications I, XIV, XV.)

It will be noticed that some of the specifications are embraced in both the first and second propositions. On the claimants' theory this was a marine trespass, and therefore in asking for a reversal of the decree below with costs they allege lack of probable cause of capture and request award of damages against the captors. (Specification XXVIII, p. 240; claimants' answer, pp. 14–18; petition for appeal, pp. 243–4.)

The Government and captors have to maintain the negative of these propositions, and the argument will therefore follow them in that form.

ARGUMENT.

I. *The Adula on this voyage was in effect a Spanish ship, and at all events is liable to condemnation as such by intendment of law.*

Before reviewing the facts and the law upon this proposition, it is to be said that the argument in the case might be addressed, perhaps more briefly, to the Government's position stated upon three propositions, as follows:

1. There was a blockade at Guantanamo, and the claimants and charterer knew of it.

2. They attempted to violate the blockade; at least, they approached near enough to see if it could be eluded, professing an intention merely to make inquiries, which—

3. Under many decided cases can not be permitted, and amounts to a violation of the blockade.

But the propositions already formulated bring out more strikingly the assignments of error, will cover the three statements made, and therefore will be followed. Taking up, then, the first proposition:

A. *As to the facts.*

The charter (pp. 38, 187) was to José R. Solis, a loyal Spanish subject, born near Havana and living with his family near Manzanillo. He had a personal passport to this effect, issued by the secretary of the province or municipality at Manzanillo in April, 1897 (answer to first interrogatory, pp. 103–4; p. 220). He was French consul. The authorities (presumably) wished him to be mayor of his town. He gave up business trips into the interior for fear he would be suspected of

being an insurgent. As to the reverse character, "Nobody can prove anything" on him (answer to twenty-second interrogatory, p. 109). After his brothers had gone to Havana, they "may have gone into the [Spanish] volunteer service" (p. 115). Solis says, on page 115, that a gentleman at Manzanillo suspected an American of keeping up correspondence with the *enemy*, which would oblige him to go to prison or to the insurgents, and that he, Solis, went to see the gentleman and held himself responsible for the American citizen. He was entered on the ship's articles as supercargo; he had, therefore, been enrolled in her crew (Solis, answer to ninth interrogatory, p. 105; purser, p. 92; master, p. 100; *et passim* in testimony of others of crew, p. 190; also *Adula* log, p. 209). The charter put the vessel at the disposal of the charterer for conveyance of passengers from Manzanillo, Santiago, and Guantanamo to Kingston, and gave an option to the charterer for another similar voyage upon similar terms upon twenty-four hours' notice after arrival at Kingston. The captain says (p. 97): "As I understood it, as well as I can remember, we were to go to any other ports that the charterer designated and was not put down in the letter of instructions, if he wished to go there;" although Solis himself says (p. 112) that he had no right to direct the navigation of the ship. Solis expected to make $19,000 net profit. He had made the same sort of trip twice before with English schooners (p. 110). He did not see that there was anything wrong in bringing refugees away from the track of war; he was doing it upon business principles; at the same time, there was a kind of humanity in it. He does

not mean to say that he did it only from humanity; it was business (p. 109). Solis knows nothing about the *Adula's* previous voyages (p. 113); he had seen her first about two months before on the north coast of Jamaica, when he was going from Manzanillo in an English schooner (p. 105). The translated copies of telegrams (pp. 220–1) show what he was doing with other vessels during those two months.

The British shipping master at Kingston sanctioned the terms of the *Adula's* engagement (p. 189), and by her log (p. 198) and clearance (p. 237) the voyage appears as to Guantanamo alone and not to Manzanillo, Santiago, and Guantanamo, although the British bill of health (p. 219) mentions the three ports. She sailed without cargo, but with an excessive supply of coal for the voyage alleged, but this did not appear from the testimony *in preparatorio,* Solis stating that the owner had ordered sufficient coal for 850 miles run, and one of the sailors (p. 117) that the only load was coal and he does not know whether it was to be sold or not (see also p. 138). The vessel bore a passport from the Spanish consul at Kingston. The purser and captain say the bill of health was viséed by the Spanish consul (pp. 89, 96, 100). Solis says (pp. 106, 111, 112), having been told the owners had decided to charter the vessel if he got the Spanish consul's permission to enter the ports, that the Spanish consul demurred unless he would take cargo, but finally granted him a passport for that trip. The witnesses assert that all papers were delivered up to the captors and that there was no spoliation. Nevertheless, this passport was not among the papers turned over to the

prize commissioners (pp. 82–7). The vessel, however, did carry, by Solis, the supercargo, the letters listed at pages 213–14, which appear to have related to commercial and domestic matters, and, among other letters (pp. 222–230) addressed to persons at Santiago and elsewhere (see No. 13, p. 213; No. 32, p. 214; No. 33, p. 222), one which states (No. 34, p. 223) that the writer is "told with great secrecy that Mr. Solis, of Manzanillo, with the steamer *Adula* (English), is going to run the blockade to carry provisions or take out passengers." The writer requests a cable (p. 224) in order to know if the letter has been received, inasmuch as the bearer may not be able to enter. Solis states that he asked the consul of the United States at Kingston for permission to make his trip, and that the permission was refused (pp. 109, 114): "Mr. Dent told me not to go. I don't remember his giving any particular reason for not going. * * * He told me not to go, and I answered to him that I was not going for anything wrong. He said to me he could not give me permission; then I said to him I decided to go, and I don't think there will be any harm for me since I didn't go for any bad thing, but only to bring refugees. * * * I don't remember Mr. Dent telling me the vessel would be liable to capture. He said I ought not to go and that he could not give me such permission. * * * Captain Forwood told me he never thought it necessary to get permission of the consul, since it was not a business matter such as bringing a cargo or wrong things. * * * If I had known he was not going to give me such permission, I should not have lost my time in going, and since Captain Forwood, of the Atlas Line,

told me he did not consider there was any danger in going for refugees." It seems that Mr. Forwood was fully informed by Mr. Solis of the consul's refusal to give permission, and disregarded it (p. 106). The necessity which the owners recognized of having authority from Washington in order legally to pass the blockade is shown by the letter of Mr. Forwood to Captain Yeats, dated May 21, 1898, in reference to one of the voyages to Cienfuegos, for the writer says (p. 233): "In giving this letter to the blockade, be sure and ask the officer if he would allow the ship to pass another voyage without cabling to Washington."

When the combined effect of the testimony *in preparatorio* disclosed the grave and immediate peril to the vessel by reason of her character and dealings, the claimants filed an affidavit by their resident agent in the city of New York, and attached to it a statement of Mr. Forwood with certain papers appended, by which they brought forward the alleged relief and protective purpose of the voyage to noncombatants in Cuba, the innocent purpose of the Spanish passport as connected with said object, and sought to show that the former voyages of the *Adula* to Cienfuegos and Santiago, which are shown by the testimony *in preparatorio* at pages 91, 96, 102, 113, 118, 121, 124, 128, 132, 136, 138–139, 140, 142, and on one of which packages of provisions were landed at Cienfuegos, were made with permission of the United States authorities, or (on the one when the provisions were landed) when it was supposed that the blockade had been abandoned; that the expectation of the owners was that the journeying to the three ports would be done

under the supervision and control of the United States Navy; that the charterer was a friend of the United States and of the Cuban insurgents; that the owners had no knowledge or suspicion that the charterer would carry letters, and that the charterer did so at the last moment only in answer to the importunities of persons who desired to communicate with friends. Similarly, the claimants denied knowledge of Solis's contraband trade, and that Solis was ever in fact engaged in trade with blockaded ports (pp. 25, 40).

The answer of the United States to these *ex parte* statements (pp. 40–49) very completely answered the claimants' contentions or proposals, especially in reference to the portion of the case which we are now considering, in paragraphs 6*a*, 6*b* (the previous record of the vessel on similar trips to Cienfuegos and elsewhere, as strengthening the validity of the condemnation, will be rather considered in the portion of the argument devoted to the southern Cuban blockade as proclaimed and as established *de facto*), in 6*h*, 6*k*, 7*g*, 8.

We have refrained thus far from embracing in the statement any matter taken from the depositions *de bene esse*. They were duly taken in accordance with the statute, and were properly used in the case upon the claimants' motion to take further proofs, and as a counter showing to their own *ex parte* affidavit and statement, under the tender by the United States, on page 48. The argument to show that they were properly considered in the case in view of the facts and authorities will be reserved for a later portion of the brief. Sufficient has been said to make apparent now the light which the

depositions *de bene esse* shed upon the questions at present under consideration.

Lieutenant Anderson, the prize master, testifies, at page 152, as to statements of Solis to him confirming Solis's own testimony *in preparatorio* of the business object of his trip and the refusal of the American consul to give him the desired permission to make it. As to the cargo of coal, he testifies that the vessel carried 96 tons, enough to carry her 1,200 miles, whereas her ostensible voyage was 550 miles; with all allowances, she had coal for four and one-third days' steaming over her ostensible trip, or considerably more than twice as much as necessary. She had 17½ tons left after steaming the nine hundred odd miles to Savannah, and the situation was not consistent with an intention to make her regular coasting trip around Jamaica after this trip, because part of the coal was in the lower hold cargo space, and for the island trip would have to be transferred to the bunkers and the cargo space cleaned up (pp. 154, 155, 170, 171).

Now, Mr. Forwood, one of the owners, or the owner's agent at Kingston, sufficiently knew all about Mr. Solis; that he was a Spaniard trading from the Spanish port Manzanillo; that he was loyal to Spain and in harmonious relations with the Spanish consul, and that he had been shipping supplies to Cuban (that is, Spanish) ports, as appears from Forwood's own statement, from the New York agent's affidavit referring to him (by which in paragraph J, p. 29, the claimants justify Solis's previous trading), and by the facts given by Solis himself as to his dealings with Forwood (p. 106). Furthermore, the Kingston *Gleaner*, of June 25 (p. 218), informed Mr.

Forwood (if he did not know before) of the report that the *Adula*, on her last arrival from Cienfuegos that week, had brought an agent of the Captain-General of Cuba to arrange to make Jamaica a Spanish provision base, and the *Adula's* previous operations combined to show Mr. Forwood what such business was, and the telegrams to Solis on pages 220 *et seq.*, indicate that Solis was a good deal about the principal hotel at Kingston, and was much engaged in trade and shipping interests, which were Mr. Forwood's business.

B. *As to the law.*

On the foregoing facts it must be quite clear that in the eyes of the law this vessel had been so far clothed with Spanish character as to become enemy property with respect to the liability to condemnation; or that her owners had so fully acquiesced in the purposes of the undertaking as to subject them to the penalty as such upon well-determined rulings of prize law. Further, knowledge and participation in the objects and incidents of the voyage as an illegal mission (to put it leniently), such as the claimants' substantial approval of the charterer's cablegram to Santiago (p. 187), will be shown on the later branches of the case when the acts of the vessel on this and previous voyages, her course to Santiago and Guantanamo, the facts as to the blockade, and the circumstances of the seizure are considered. The claimants seek to have it appear that all matters and transactions bearing a doubtful look become innocent when viewed in the light of the alleged humanitarian purpose of the voyage, and become legal when the policy of the United

States with regard to refugees is considered. But the purpose of the voyage is professedly commercial and the humanitarian object merely an asserted incident. The United States, as a matter of fact, had not recognized Cuban belligerency largely because the Cuban ports were held by Spaniards and not by the insurgents; and while the policy of the United States did not forbid, in certain instances, the withdrawal of refugees upon definite permission given, especially their own citizens and neutrals, there was no policy to allow, as a usage and without specific permission, the transportation of refugees from Cuba; in fact, the natural hesitation of the United States authorities to permit the withdrawal of refugees in the much stronger case of imminent bombardment of Santiago was one of the striking features of that campaign, and is proof that the claimants can not rely upon this shadowy justification. In reality the *Adula* was seeking to maintain traffic and correspondence both with the enemy and with us, and alleges a right to immunity something like that possessed by a cartel ship. A cartel or license, which suspends the hostile character, protects even an enemy's ship, but without it a neutral vessel actually in the enemy's service or upon the enemy's errand should not be shielded behind the alleged beneficent purpose any more than an enemy vessel.

Prize law forbids a citizen's trading with the enemy; much more does it forbid an enemy's trading with the enemy on his own instance or under neutral cover. This reason is to be added to the other grounds for the condemnation of enemy or neutral property under such circumstances. The case here is just that case — covert

trading with the enemy by an enemy and a neutral, under an enemy license—the Spanish passport.

Of course the fundamental principle of prize law, that all trade with the enemy is prohibited to all persons, whether natives, naturalized citizens, or foreigners, under the penalty of confiscation, refers more especially to those who are domiciled in the national territory, and this case finds sufficient ground for condemnation on the broad principle of breach of blockade by the neutral or by an enemy with the neutral owner's concurrence. And again, the trade with the enemy ordinarily contemplated refers to the conveyance of cargoes. Nevertheless, communication is commerce, and the conveyance of intelligence, which is one of the striking elements in this case and lies apart from the contention that the coal, or at least the surplus thereof, was cargo, is an offense of very high grade and is as much subject to the prohibitions of prize law as the transportation of contraband or the breach of blockade; and is as much forbidden to an enemy or a neutral (whatever the *locus* of the operations) as to a citizen. Sir William Scott says in *The Vrouw Judith* (1 Rob., 150):

> A blockade is a sort of circumvallation round a place *by which all foreign connection and correspondence is, as far as human force can affect it, to be entirely cut off.* It is intended to suspend the entire commerce of that place. * * *

Justice Washington, in the case of *The Tulip* (3 Washington Circuit Reports, 181), says:

> The same principle of the maritime law which makes that species of trading, which consists in the

> mere intercourse of buying and selling, an offense, *with stronger reasons* for the public safety must condemn the act of conveying intelligence to the enemy. * * * In neither case does the condemnation proceed on the ground of the party being actually an enemy nor of the property being actually owned by an enemy, but in both cases the party acts as if he were an enemy, and therefore the maritime law treats the property as if it belonged to an enemy.

In the *Bermuda* (3 Wall., pp. 514, 557) the decision was that enemy commerce under neutral disguises has no claim to neutral immunity; that while neutrals are conveying to unblockaded belligerent ports even contraband of war, the seizure is restricted to the actual contraband and does not extend to the ship or other cargo, except in cases of fraud or bad faith on the part of the owners or of the master with the sanction of the owners, and the *Bermuda* was forfeited because of the owner's fraud and bad faith found in the case, which made him responsible for unneutral participation in the war.

The doctrine of the responsibility of the principal for his agent's acts or course of proceeding is fully applicable to the case. The usual form of that doctrine in prize law fixes the responsibility of the owner for the master's acts, always so far as the vessel is concerned, although certain exemptions are found for a cargo owner who does not authorize or ratify the master's conduct. If the owner has sustained any injury by fraudulent or unauthorized acts of his agent, he is entitled to his remedy over against the agent. (Story's Principles and Practice of Prize Courts, pp. 71, 72.) The reason of these rules properly includes

the case of the charterer here, whose dealings and intentions were fully known to the owners, which view is strengthened by the fact that he was supercargo on their own crew list, and thereby received an authoritative and representative character with definite functions attached.

Now, even if the owners had not anticipated the violation of the public law, "it is a settled principle that * * * the fate of their vessel with respect to an infraction of that law must depend upon the conduct of the agent with whom they have intrusted its management." (*Jecker* v. *Montgomery*, 18 How., 119; *The Bermuda*, 3 Wall., 556.) Here, too, while there was no spoliation of unusual aggravation, the disappearance of the Spanish consular certificate is sufficient to lead to the most unfavorable inferences as to employment and destination, if not as to ownership. (*The Bermuda*, id., 550.)

There can be no doubt of Solis's character as an enemy on his own admissions, even taking his character as a neutral French vice-consul. The rule is that such an official, resident and trading in a belligerent country, is as to his mercantile character deemed a belligerent of that country. (*The Indian Chief*, 3 Rob., 22; *The Josephine*, 4 Rob., 25.)

Consequently, as we contend, there can be no fair doubt of the knowledge and adoption by the claimants of Solis's enemy character for the purpose of this voyage.

Now, the conclusions of prize law respecting the national character of property, which may be applied here with respect to the temporary national character or assimilation to enemy character of this vessel, depend some-

times upon the habits and trade of the ship or upon the nature of the voyage and cargo, or upon the legal or illegal conduct of the parties themselves. Very often, where there is neutral breach of blockade, or such fraudulent carrying of contraband as taints the vessel too, the domicile of the proprietor enters into the question, though not, of course, in the present case. Taken by all the tests suggested, this vessel is to be condemned both because of her habits and trade, because of the nature of this voyage, and upon the illegal conduct of the parties. In all such cases where the property is condemned it appears to be by a fiction, or rather by intendment of law, deemed the property of enemies—that is, of persons who are so to be considered in the particular transaction. (Story's Prin. and Prac., etc., pp. 58, 59, and auth. cit.)

In most of these cases the transfer to the enemy's service was so fully accomplished or the enemy character was so predominant as to justify the condemnation of the vessels *eo nomine;* but in the *St. Lawrence* (1 Gall., 467; Fed. Cas., 12232) this was not the case; nevertheless the vessel was condemned as enemy vessel *sub modo* upon circumstances similar in principle with those here involved. This was a case of an American ship which had, however, during the war of 1812, sailed under a British license from Liverpool and was ultimately claimed by an American firm, one of the members of which was a native of Scotland, but a naturalized citizen of the United States, although he had been resident in England. There was also an obstinate suppression of papers, and because of these circumstances the court was of opinion that it

might have placed upon the vessel and cargo "the imputation of an hostile character," although it was finally disposed of upon other grounds. It is cited here to show that even where a vessel may not be condemned *eo nomine* as enemy property, it may bear an enemy character and be subject to the imputation thereof and liable to condemnation on that ground.

The authority for contending that the *onus probandi* of neutral interests rests on the claimant may be appropriately considered here. It is a general rule of the prize court that the *onus probandi* that the property is neutral rests upon the claimant, and if he fails to show it, condemnation ensues. "The burden of the neutrality of the property rests on the claimants." (*The Walsingham Packet*, 2 Rob., 77; *The Rosalie and Betty*, id., 343; *The Countess of Lauderdale*, 4 Rob., 283; Story's Prin. and Prac., etc., pp. 26, 45, 53.)

While ships are deemed to belong to the country under whose flag and pass they navigate, and it is said that the flag and pass are conclusive of the character of the ship, the party who stands upon the character so shown is necessarily bound by all the circumstances affecting it. Even where the flag and pass are not ambiguous the claimant is not at liberty when they happen to tend to his disadvantage to turn round and deny the character which he has worn for his own benefit. (Story, pp. 61, 62, and auth. cit.) Much more when the national character is varied or affected by a belligerent document not consistent with neutrality should the neutral owner be responsible for the penal consequences which properly

attach to an enemy character or to a quasi enemy character which is forbidden to a neutral. Sailing under the enemy's license is deemed *per se* a sufficient cause of condemnation. The Spanish passport was an enemy license or pass.

II.

The vessel was engaged, under the charter, in running a blockade duly established and effectively maintained.

A. *As to the facts.*

The testimony *in preparatorio* as to the course of the vessel is that she was directed at all times when the weather would permit to the port of her destination, but it was considerably out of the course to the westward on account of the winds and currents (p. 92). They steered to the westward of the direct course, as can be seen by the log book, on account of not being acquainted with the coast line to the east of Santiago. They were sailing a little wide of the port and may have been a couple of points off the course to the westward. As they approached the coast not far from the fleet at Santiago, they imagined they would be stopped, and slowed down and steered about a quarter of a mile in the direction of Santiago, and then turned around and steered direct for Guantanamo (p. 101). It is evident from the final sentence of the captain's answer to the thirty-sixth interrogatory that in the preceding sentences he means to say that he first changed his course farther to the west and then veered around to the eastward. When they sighted the war

ships at Santiago they "were coming up past there and * * * saw them about 4 or 5 miles away and * * * passed right on by them" (p. 120). The chief officer says (p. 127) that they left Morant Point steering a direct course to Guantanamo, and steered that course until they found about noon on the next day, June 29, that they were near Santiago and much farther to the westward than they expected, for which the only reason they can give is currents, wind, or bad steering. They then altered the course, apparently still farther to the west or to the northward, in order to get their bearings and steer a direct course along the coast. When they saw the American men-of-war they headed for them for a short distance and then sheered off to the eastward. They were 10 or 15 miles wide of their course (pp. 127, 128) and about 5 or 6 miles from the fleet at Santiago. One of the quartermasters says (p. 135), "We went right straight from Jamaica to Guantanamo," and immediately adds, "We went by Santiago before we came to Guantanamo."

The true story of the voyage is not to be learned from the log (pp. 198, 199), which is shown to be filled with inconsistencies, as illustrated by the charts in evidence (a reproduction of one of which is given in the brief for the naval captors), and by the analysis of the log entries, and of the positions by observation and dead reckoning, respectively, given in Lieutenant Anderson's deposition on pages 156–8.

The *Adula* left Jamaica about 6 p. m. July 28, and set successive courses in passing along the Jamaican shore from E. S. E. to E. N. E., until at 11.15 p. m. Morant

Point light (the eastern headland of Jamaica) bore to the N. of N. W., when they set their course N. N. E. About midnight, or not long after, it would seem, they skirted the western edge of the dangerous Fromigas Bank (as to the danger, see Anderson's testimony, p. 159), although it might be suggested that the proper course to Guantanamo would have taken them clear of the eastern edge. Lieutenant Anderson, however, on page 159, only thinks that a prudent navigator would not have put his course on a bank like that, and in cross-examination (p. 171) believes that it would have been natural, under a northeastern breeze, to have borne a little to the westward of the bank. At 2 a. m. they were still holding a N. N. E. course, hauling around more to the north at 7.30 a. m. At 9 a. m. they sighted the Cuban coast. At noon their latitude by observation and dead reckoning is entered on the log as identical. But the dead-reckoning latitude, figured out by the courses on the run from 11.15 the night before, is 16 miles south of the observed latitude, and working out the log entries puts the *Adula* at noon at the point C, some 6 miles east of the point D, where the dead reckoning, that is, the course steered, and the run places her, *according to the log entry of longitude*, i. e., according to the captain's statement; that is, she actually appears to have been at the more westerly point and so much nearer Santiago. This difference is admitted in the affidavit on behalf of the claimants (p. 27). To bring her out at D, instead of at C, where Lieutenant Anderson says computation on the entries places her, the master may have allowed for an easterly wind, but the log does not show this. The striking fact

is, as shown from claimant's own testimony cited below, that the vessel was many miles farther west and nearer Santiago than any positions to be deduced from the log. At 1 p. m. he shifted his course to north by west when about 8 miles from the coast. At 2 p. m., when 5 miles off, the *Adula* saw several war vessels off Santiago bear N. W. by W., and then she steered coastwise for her port.

Solis's statement is that the war vessels in the neighborhood of Santiago were 10 or 12 miles off when they were sighted (p. 113), and these vessels may possibly have been farther than 5 miles to the east of the Santiago Morro. But two of the *Adula's* own officers testified that the distance from the war ships was about 5 or 6 miles (pp. 128, 131), and the records of the Navy Department show that in the Santiago blockade and investment the war vessels seldom ran farther than 3 or 4 miles from Morro, although within the range of the Morro guns, which carried 6 or 7 miles. (See *post*. p. 31.)

It will be observed that even if her course to D at noon on the 29th be accepted as consistent with good faith, she then should have held off on a NE. by N. course for Guantanamo (for the desire to get bearings by sighting the coast line had been gratified for at least three hours), and instead of that she continued for another hour on the more northerly course, and then edged around still more to the westward before steering away to the east from the fleet at Santiago. Just before this eastern deflection the captain says he held to the westward, and the Government's position is that he held too long and much too far to the westward (p. 172). The log then says that

at 4 p. m. they were off Guantanamo harbor, hailed by an American war ship [the *Vixen*], and were told to proceed. At 5.30 they were boarded by the *Marblehead's* officer with a pilot and conducted inside to their anchorage.

It will be noticed that there is further inconsistency in the run to be deduced from these log entries, for the distance from the point where the war ships were observed to Guantanamo appears to have been 30 miles, and the vessel to have covered it in the two hours, from 2 o'clock to 4. This does not conduce to reliance on the entire consistency of the log or the uniform and exact veracity of the officers. It seems that the vessel had gotten the wrong entry in her log on a previous occasion (p. 168).

The occurrences at the time of seizure are tolerably clear from the accounts of the captain (pp. 98, 99, 103), Solis (pp. 104, 107), Morris (p. 119), Clarkson (pp. 125–127), Hamilton (pp. 130–132, 134), Darling (p. 142), of Lieutenant Anderson (pp. 144–148), and of the men-of-warsmen Ellenberg and Gill (pp. 176, 180). The captain says that the *Vixen* at the harbor entrance told him to proceed, and Solis that the *Vixen's* hail was, "All right; go on," and Clarkson says that they presumed that the *Vixen* had nothing to say to them and was allowing them to proceed. But the *Vixen* was, of course, merely closing them in for capture and sending them on for final seizure. This is quite evident from Morris's statement (p. 119), viz:

> The crew of the *Adula* made out, about a mile and a half before we reached Guantanamo, a small cruiser, and the *Adula* stopped, and the cruiser ran up across the bow and the captain of the cruiser

asked us, "Didn't you sight the war ships down to Santiago?" and the captain said, "Yes;" and the captain stopped and he said, "Didn't you hear that Guantanamo was blockaded?" and our captain said, "Yes;" then he said, "You can proceed on."

The claimants' theory and contention is that they were proceeding to Guantanamo innocently, and that this is plainly revealed because they kept on to the harbor after they saw the war ships, and when they had sufficient time to run away without danger of being overhauled or brought to by shot. The captain says that he could see the vessels in the bay before he rounded the westerly point; that he could see the ships about 4 miles off from his ultimate anchorage (p. 99); but he seems to be referring in this testimony to the time when he was ordered in by the *Vixen*, when he was only half a mile from the entrance to the bay and about 4 miles from where he anchored. Morris says that they found the war ships when they got to the mouth of the harbor, making out the small cruiser about a mile and a half before they reached the harbor (p. 119), and Clarkson thinks there was no seizure made until they had dropped anchor two hours after they had entered port when the first and only notice of the blockade was given them (p. 125); while Hamilton says that they were captured about a mile and a half from the harbor, outside of the channel, laying to for a pilot, the little cruiser having come out and edged along the coast inside of them (p. 131). Hamilton also says that—"We came up by Santiago * * * and * * * stopped right out here in the center of the mouth of the channel, and *then we saw the*

war ships" (p. 132). Darling's statement is: "We were right in the center of the mouth of the harbor, outside, when we sighted the war vessel" (p. 142).

The captors' depositions plainly confirm the facts shown by the preponderance of the claimant's testimony, for it appears from the depositions and from one of the charts, which are original exhibits in the case, that the western point of Guantanamo Harbor is a rather high, wooded bluff (p. 147); that the *Marblehead* and *Vixen* could not have been seen by the *Adula* until she was very close to the entrance, and the *Vixen* was proceeding out on her way to Santiago; that the speed of both the *Marblehead* and *Vixen* was so much greater than that of the *Adula* that she would have stood no chance of escape if she had attempted it, even at the farthest moment before seizure when she might have sighted the American vessels, and that the range of the armament, especially that of the *Marblehead*, was such as to render any thought of escape hopeless (pp. 147, 148, 178, 179, 183).

The facts as to the blockade and claimants' knowledge of it, and as to the movements of the *Adula* during May and early in June, 1898, are closely related and may be briefly stated together. On many of the facts there can be no real conflict. By the Executive proclamation of April 22, 1898, Cienfuegos, on the south coast of Cuba, was included in the blockade of the north coast and ports between Cardenas and Bahia Honda (p. 211). This proclamation was duly published to the world and was notified to the owners of the *Adula* by Lieutenant Anderson off Santiago on May 9. The *Marblehead* was then blockading Cienfuegos. (Log, p. 191; Captain Yeats,

p. 99; Lieutenant Anderson, pp. 150, 168.) At that time the *Adula* was proceeding to Kingston from Cienfuegos under permission of the United States authorities obtained from Washington through the consul at Kingston. On the next day she left Cienfuegos with 350 passengers and went to Kingston, and Lieutenant Anderson boarded her again coming out. On May 16 she left Kingston, arriving in Santiago on the 17th, and sailed back again on the same day with 200 passengers. On this trip, too, she proceeded under instructions from Washington, Consul Dent of Kingston merely acting as intermediary. The first voyage was made on behalf of a Mr. Fowler without written agreement; the second on a charter party with a Mr. Portundo (pp. 30, 35, 36, 91, 96, 118, *et passim* in claimants' testimony; Anderson, pp. 151, 167–168). Another trip to Cienfuegos was made from May 23 to 26. (Log entries, pp. 192–195.) On this trip the *Brooklyn* detained the *Adula* and finally let her pass upon the Washington permit, which appears to have legalized this voyage also. In a dispatch dated off Cienfuegos, May 23, contained in the appendix to the Report of the Chief of the Bureau of Navigation for 1898, at the foot of page 74, it is shown that Consul Dent merely countersigned the original orders from Washington. The case of the *Olinde Rodrigues* (174 U. S., 510) in effect rules (p. 521) that the court will take judicial notice of such public facts contained in formal official published reports.

After some difficulty with the Spanish port officials, which was removed through the British vice-consul at Cienfuegos (who seems to be identical with the charterer

on this second trip to Cienfuegos, pp. 30, 37), she entered and then cleared and returned to Kingston with another load of passengers. There were four of these trips to Cienfuegos and Santiago, and five including the final one to Guantanamo (pp. 96, 113, 117, 118). The third trip to Cienfuegos will presently be shown.

On June 8 a blockade *de facto* of Guantanamo was duly established, and thereafter effectively maintained. It does not require Lieutenant Anderson's clear and positive testimony to this effect (pp. 150, 151, 160, 161, 174), nor his testimony that there was a very strict blockade at Santiago as early as the 1st of June, as established by order of Rear-Admiral Sampson (pp. 148, 149, 154), and at Manzanillo (p. 166), for the report of the Bureau of Navigation is filled with proof of the fact—certainly as to Santiago and Guantanamo, as well as Cienfuegos, which will be referred to later; and the general history of the war substantiates the same facts, and, we contend, may properly be regarded by the court under the principle of judicial notice.

The third trip to Cienfuegos was made on June 15, upon a letter dated June 12, expressing a charter party (pp. 32, 33, 38), the *Adula* arriving at Cienfuegos June 17, where she landed 140 or 150 packages or barrels of provisions (p. 33)—the captain says about 200 packages of provisions (pp. 96, 139). The claimant (p. 33) speaks of the charterer's agent, a Mr. Salines, a Cuban; but the purser says (p. 91) that "the ship was under charter that third time to Salcinas, a Cuban *or Spaniard*." Claimant says that the consul did not warn him against making this voyage, but it sufficiently appears, and is in fact admitted,

that they went without permission, and that Mr. Dent informed the owners that it was beyond his authority to give them a pass through the blockade (pp. 32, 91, *et passim*). It seems also that Captain Yeats stated to Lieutenant Anderson that the American consul had refused permission for the vessel to enter the Cuban ports on the voyage she was making (pp. 154, 170), and the captain says that Solis told him after the capture that Consul Dent had refused him permission to go to Guantanamo (p. 102). Claimant says that on this trip they found no vessels outside of Cienfuegos, but at 60 or 70 miles south of Cuba they were spoken by the *Yankee*, who warned them that they must not go back to Cienfuegos, but let them pass (pp. 33, 102). The captain says (p. 102) that on the third trip to Cienfuegos there was no blockade; the way he knew was because he heard the [previous] captain say there were no war ships there.

Now, it may as well be said here that after knowledge of the blockade which the *Adula* had (the previous permission to pass having been refused), it is not permitted to a neutral vessel to say in a temporary absence of the blockading squadron, that, the weather being clear, no blockading vessels were seen, and thereupon to claim immunity from a violation. (*The Baigorry*, 2 Wall., 480; *The Andromeda*, id., 481; Snow's Int. Law (1898), p. 155.)

And it is well settled that a neutral has no right to presume the discontinuance of a *proclaimed* blockade. In *The Circassian* (2 Wall., 135, 150), it is said that in the case of a public blockade the claimant's are held to proof of discontinuance in order to protect themselves

from the penalties of attempted violation of such blockade, meaning a proclaimed blockade as distinguished from a simple blockade or a blockade *de facto*. The court quote the following sentence of Sir William Scott, citing the case of *The Betsey* (1 Rob., 332), and *The Neptune* (Id., 144): "It must be conceived to exist till the revocation of it is actually notified." The court further say:

> It is, indeed, the duty of the belligerent government to give prompt notice; and if it fails to do so, proof of discontinuance may be otherwise made; but, subject to just responsibility to other nations, it must judge for itself when it can dispense with blockade.

However, the *Adula* was not condemned in this proceeding for the breach of blockade at Cienfuegos, although she might have been libeled and condemned for that offense. But evidence of what the vessel did on the previous trip under similar instructions to those she had in this case shows clearly the business in which she was engaged and indicates an intent to enter in this case.

On June 27 the blockade was extended on the south coast of Cuba from Cape Francis to Cape Cruz, inclusive. This shut off the great bight on the south coast and included the ports of Cienfuegos and Manzanillo. It is likely that this blockade as proclaimed was not extended to Santiago and Guantanamo, because, as to Santiago, the blockade and investment there for about thirty days previous, and ending in the great naval battle within a few days after the *Adula* sailed for Guantanamo, was notorious to all the world and was impregnable; and as to

Guantanamo, a later proclaimed blockade might very naturally be considered as likely to weaken the just claim to effectiveness of the blockade *de facto* in the interim between June 8 and June 27. The *fact* of the blockade of June 27, with special reference to the proclamation, which included Manzanillo, one of the *Adula's* ports of destination, is shown by nearly all the claimants' witnesses, because they say they were told of it when they reached Guantanamo. They really admit far more than this, as will be presently shown, both as to the blockade *de facto* and the blockade proclaimed.

Taking up now the facts of history on the subject, it might be argued on the Navy reports that the blockade operations at Manzanillo did not become strictly effective and continuous until about the time of the proclamation of June 27, or immediately thereafter. But we are not especially concerned with Manzanillo; and in any event if the claimants knew of the latter proclamation before they left Kingston, they knew that Manzanillo was barred to them. As to Cienfuegos, as early as April 29, there was a naval division before that port, which included the *Marblehead*, the *Nashville*, and the *Eagle;* a Spanish merchant vessel was captured, a torpedo boat engaged, cable-cutting performed, and the shore batteries bombarded. The flying squadron blockaded there for about a week before proceeding on to Santiago, and through May and June the *Marblehead* herself, as well as the *Yankee*, with various other vessels, were on duty there, professedly blockading under the earlier proclamation and maintaining a strict blockade. (Report of the Chief of the Bureau of Navigation, pp. 183, 200, 214, 217, 350,

393, 403, 423.) As to Santiago, the fact is beyond question. The operations there began with cable cutting by the *St. Louis* before the Spanish fleet entered. After the arrival of the flying squadron about May 24, where they found the *St. Paul*, *Yale*, and *Minneapolis*, Rear-Admiral Sampson soon took command, and that became the chief blockading station along that coast. The subsequent history of it is well known—the landing of the expedition somewhat to the east on June 22, and the naval battle of July 3. To mention one fact among many shown by the records, the admiral's order of battle dated June 2, directs that the vessels will blockade Santiago de Cuba closely, keeping about 6 miles from the Morro in the daytime, and closing in at night, the lighter vessels well in shore, and on June 12 he ordered our vessels to maintain a blockading distance of 4 miles during the daytime and directed this distance not to be exceeded except on permission under special circumstances. (Appendix to report, etc., pp. 208, 210, 450, 481, 514.)

Now, particularly as to the case of Guantanamo, repeating that the facts involved are matters of open history and are in public official reports as well as in many accurate accounts and histories of the war already written, and referring now especially to the records in the report of the Bureau of Navigation—the cable cutting at Guantanamo was intended and ordered as early as April 9 and April 20 (p. 173), and was attempted May 19 (p. 210). Under date of June 8 the admiral says (p. 488) that he sent the *Marblehead* and the *Yankee* from the main blockade at Santiago on June 7 to arrive at Guantanamo by early daylight, their instructions being not to enter upper

portions of the bay, but to hold the lower bay for the accommodation of our ships, and that this was successfully accomplished. On the 10th the *Panther* was sent in company with the *Yosemite*, and the marine battalion transported on the *Panther* was landed and established in camp (p. 489; see also p. 441). On June 15 the *Texas*, with the *Suwanee*, joined the *Marblehead* at Guantanamo, and some of the outer harbor defenses were bombarded (p. 447). The *Texas* then resumed her place on the Santiago station. On June 24 the admiral received among others a dispatch from Washington informing him of the report mentioned throughout this record that an officer or officers of the Spanish Government in Cuba had gone to Kingston on one of the previous trips of the *Adula* with a large sum of money to establish a base for provision shipments (p. 501). On this day, or at least before the seizure, it seems that Admiral Sampson issued a bulletin ordering a lookout to be kept by the American fleet for the *Adula*, as she was supposed to have had General Blanco's private secretary on board, and besides had left Kingston without permission of the American consul, and in spite of his warning (Rec., p. 153). Bearing in mind Lieutenant Anderson's positive testimony about the strictness and continuance of the Guantanamo blockade, it is evident from all sources that the *Marblehead* remained there on that duty; and the fact of the blockade is conclusively established from Spanish testimony, because at pages 451 and 496, Bureau of Navigation Appendix, appears a translation of a letter dated June 10, which was captured by the Cubans en route to Santiago, from General Pareja, of the Second Brigade of the Cuban

Division of the Spanish army, describing the operations about the Caimanera or outer harbor of Guantanamo, from which the following quotations are drawn:

> The seventh day [June 7] at dawn brought seven ships before the port of Caimanera. They fired grapeshot and all kinds of projectiles on the Playa del Este and Cayo Toro * * *. This * * * lasted * * * until 5 o'clock in the afternoon. * * * From that day * * * ships * * * occupy the outer port with a transport of war and a variable number of armed ships and other vessels of war and armed merchant ships; total never less than four. * * * The American squadron in possession of the outer bay has taken it as if for a harbor of rest, they having anchored as if one of their own ports since the 7th, the day they cut the cables. * * * To-day there is in the harbor a large armored vessel and seven more vessels, with a large transport that appears to be a storeship. They patrol Playa del Este with armed launches, I have just been informed. * * *

See also, as to the extent to which our forces held or controlled Guantanamo Bay, the testimony of Lieutenant Anderson, at page 173 of Record.

Now, the claimants advance a theory that Guantanamo was in possession of our forces. This would necessarily mean that ingress and egress was free, which, of course, was not the case. We were seeking to invest the outer port defenses, and were at the same time blockading it; but in no sense were we ever in possession of this outer territory, much less of the inner harbor or the city of Guantanamo. Now, the *Circassian Case* (2 Wall., 135) shows that the occupation of a city by a blockading belligerent does not

terminate a public blockade of it previously existing; the city itself being hostile, the opposing enemy in the neighborhood, and the occupation limited, recent, and subject to the vicissitudes of war. Still less does it terminate a blockade proclaimed and maintained not only against that city, but against the port and district commercially dependent upon it and blockaded by its blockade. By this theory, too, the claimants appear to draw some distinction between a military investment and a commercial blockade, but this is not tenable in view of many authorities on the law of blockade, and especially of the decision in the *Olinde Rodrigues* Case, *supra*. There was at Guantanamo a landing of marines and the beginning of a military investment, and a commercial and military blockade as well. In reference to this point it is to be observed that the treaty with Great Britain of 1794, although now abrogated or obsolete, contains a clause (Treaties and Conventions between the United States and other Powers, Washington, 1889, p. 390) which throws light upon the case, especially in view of the fact that this is a British vessel, because the language is that vessels of the two powers, respectively, may be turned away from a port or place either *besieged, blockaded, or invested*, and shall not be detained nor their cargoes confiscated, unless after notice they shall then attempt to enter; and the clause uses the same phrase "besieged, blockaded, or invested" in reference to an entry into a port before the blockade is established.

Thus much for the fact of the Guantanamo blockade.

Finally, as to the claimants' and charterer's knowledge of the Guantanamo blockade and the proclamation of

June 27. Mr. Forwood says in his *ex parte* statement (p. 35) that the official notification of the blockade of the three ports of Guantanamo, Santiago, and Mazanillo was not declared by the British Government at Jamaica until July 6. He probably refers to the declaration of the proclamation of June 27. He does not say that either the blockade or the proclamation was unknown on the island at the time the *Adula* sailed. The purser did not know that Guantanamo was blockaded. The captain knew when he left Kingston that there was a state of war at Guantanamo; but although the owner told him he would meet war vessels at Guantanamo as off Santiago, he did not know anything about a blockade at Guantanamo "*in the strict sense of the word;*" at the time he went there it was apparently under an order of blockade, but no warning or notice had been given him, and the first time he knew of the blockade was when Commander McCalla told him he had no right there (p. 98). But Solis says they told him *on board the Adula* that the blockade of Guantanamo was published "the 27th, *the day before*" (p. 108). That must have been on the 28th, either before they left Kingston or at least some hours before they sighted the Cuban coast on the early morning of the 29th. It is true, he says immediately afterwards, that he had not heard it before he left Kingston, and did not know it until he arrived at Guantanamo, but this obviously should be read in the light of the intermediate sentence, "I did not know *officially* Guantanamo was blockaded." He had heard of the landing of the marines; he understood there were some war ships there; but he did not think the Kingston

newpapers published the blockade, and he "understood that Guantanamo was not declared officially blockaded." He told Captain Forwood that the first thing he would do would be to go to the Admiral and tell him his intentions, and he thought that even being blockaded, the Admiral would give him permission to go and get refugees from the ports in question (pp. 108, 109, 113). Now, Morris heard on the streets of Kingston, three days before, that Guantanamo was blockaded, and he says that when the *Vixen* hailed the *Adula* and Captain Yeats was asked whether he had not sighted the war ships at Santiago, and whether he had not heard that Guantanamo was blockaded, the captain answered yes to both questions (p. 119); and Morris had heard on each trip before leaving Kingston that the ports of Santiago, Cienfuegos, and Guantanamo were blockaded (p. 121). The chief officer never knew of any order being given for the blockade of Guantanamo before they entered, but he knew the American fleet had been there or might possibly be there. The other witnesses of the claimants deny knowledge of the blockade. Mr. Forwood's letter to Captain Yeats betrays knowledge of the facts at Guantanamo, for he says (pp. 186, 187):

> On your arrival at Guantanamo, to which port you will proceed direct, you will find, no doubt, American war ships off the port. * * * From Guantanamo you will proceed to off Santiago. Here you will meet the other fleet, and carry the same instructions out with them as I have mentioned to you in reference to Guantanamo. The charterer is telegraphing at once to Santiago for a pilot to come off to meet the ship, if permission is granted, to pilot your ship into the port. * * *

Mr. Forwood then formally cautions the captain against doing anything "that could be interpreted as a breach of faith in being allowed to pass the blockade and enter the ports." Lieutenant Anderson says that Solis told him that as the *Adula* had previously entered twice at Cienfuegos through the blockade without permission or authority he thought he might do the same. The Kingston newspapers, in evidence (pp. 86, 159, 215, 219), show that on June 14 the landing of the marines at Guantanamo or Caimanera was published at Kingston, and that the statement was made from a London cablegram that the landing was made in order to acquire for Admiral Sampson a base for coaling and supplies; that the landing of the marines was made under the protection of the war ships, the *Marblehead* being named; and that the Americans now hold 35 miles of the coast east of Santiago, including Guantanamo Harbor. The bombardment at Caimanera by the *Texas* and *Marblehead* is also noted in the Kingston Gleaner of June 25.

B. *As to the law.*

We submit that the foregoing facts show a sailing from a neutral port with intent to enter a blockaded port, and an attempt to do so. We therefore contend that one of the two following statements is beyond question applicable to this case:

(*a*) The vessel was plainly engaged in a violation of the blockade with knowledge thereof, and must be condemned. For this it is not necessary to cite authorities at length; it is the unquestioned basis upon which the

law affecting neutral responsibility in reference to blockades rests, and the authorities are without number. (*The Circassian*, 2 Wall., 135; *The Baigorry*, id., 474; *The Cornelius*, 3 Wall., 214; *The Cheshire*, id., 231; *The Bermuda*, id., 514; *The Admiral*, id., 603; *The Herald*, id., 768.)

The statement in the *Circassian* Case (2 Wall., 135, 151), is as follows:

> It is a well-established principle of prize law, as administered by the courts, both of the United States and Great Britain, that sailing from a neutral port with intent to enter a blockaded port, and with knowledge of the existence of the blockade, subjects the vessel, and, in most cases, its cargo, to capture and condemnation. We are entirely satisfied with this rule. It was established with some hesitation, when sailing vessels were the only vehicles of ocean commerce; but now, when steam and electricity have made all nations neighbors, and blockade running from neutral ports seems to have been organized as a business and almost raised to a profession, it is clearly seen to be indispensable to the efficient exercise of belligerent rights. It is not likely to be abandoned until the nations, by treaty, shall consent to abolish capture of private property on the seas, and with it the whole law and practice of commercial blockade.

(*b*) Or else the vessel, seeking to elude the blockade (which is equally a violation) rather than openly break it, and professing an innocence which did not exist, approached a blockaded and invested port for inquiry, which under the circumstances was not permissible and equally subjects her to condemnation. As in the case of

The Cheshire (3 Wall., 231), she knew of the blockade and investment when she sailed; she had no just reason to suppose it had been discontinued, and her approach under these circumstances to the mouth of the blockaded port for inquiry was itself a breach of the blockade and subjected both vessel and cargo to seizure and condemnation. It will be noticed that in *The Cheshire* Case the captain's instructions were "to call off Savannah merely for the purpose of inquiry, but on no account whatever to enter a blockaded port." The opinion of Mr. Justice Field, speaking for the court in that case, continues (p. 235):

> The rule on this point is well settled, and is founded on obvious reasons of policy. If approach for inquiry were permissible, it will be readily seen that the greatest facilities would be afforded to elude the blockade; the liberty of inquiry would be a license to attempt to enter the blockaded port; and that information was sought would be the plea in every case of seizure. With a liberty of this kind the difficulty of enforcing an efficient blockade would be greatly augmented. If information be honestly desired, it must be sought from other quarters. In the case of the *James Cooke* (Edw., 263) the ship was captured at the entrance of the Texel, and the court applied this rule, observing that the approach of the ship to the mouth of a blockaded port, even to make inquiry, was *in itself* a consummation of the offense and amounted to an actual breach of the blockade.

See also the case of *The Josephine* (id., 83), in which it was held that if a vessel is found without a proper license near a blockading squadron under circumstances

indicating intent to run the blockade, and in such a position as that if not prevented she might pass the blockading force, she can not thus, *flagrante facto*, set up as an excuse that she was seeking the squadron with a view of getting an authority to go on her desired voyage.

Let us consider also the case of *The Admiral* on this proposition. (3 Wall., 603, 615, 616.) In that case it was insisted that the mere act of sailing from a port that was blockaded at the time the voyage was commenced is not an offense against the law of nations where there is no premeditated intention of breaking the blockade. The court granted that proposition, but held that it was equally well established that it is illegal for a ship having knowledge of an existing blockade to attempt to enter a port in violation of the blockade, and called attention to the decision in the *Circassian* Case and other cases, that the act of sailing for a blockaded port after notification, with an intent to violate the same, is in itself illegal. The court then consider the further facts in the case at bar, which show that the *Admiral* had, not an enemy license or passport as in this case, but a doubtful clearance. The principle and the language of the court are therefore fully applicable to this case, which, on the enemy passport, is really stronger.

> * * * The master did not present the certificate of clearance, *but resorted to the terms of the charter party and the letter of instructions*, and insisted that those showed that the vessel did not intend to violate the blockade regulations. Arrested, as the ship was, when near the blockaded port and when heading for the land, and when in point of fact she was in the act of entering the port, the master then,

> instead of presenting the clearance for the port which he had passed, set up the pretense that his purpose was to inquire whether the blockade had been raised, and claimed that he must be first notified of a fact, which he knew when the ship sailed, before capture could lawfully be made. Such a defense is without merit and finds no support in any decided case or in any acknowledged principle applicable to prize adjudications. * * * Every pretense that the vessel intended to desist from her unlawful purpose if she found that the port was blockaded is negatived by the circumstances. Those in charge of her knew before she sailed that the port was blockaded, and they also knew that they had no reason to suppose that it was to be raised before her arrival. *Consequently, they made no inquiry and did not wish to make any until it became necessary to do so as a defense or excuse for an illegal act.*

The *Adula's* purpose here was to inquire whether they could enter. This was exactly the same as to inquire whether a blockade of which they knew had been raised.

The foregoing cases are conclusive and final authority against the vessel in this case, and no further citation would seem to be required.

It is to be remembered that the owners and charterer profess an intention to inquire of the admiral, and they must have known, in view of the long continuance of the blockading operations at Santiago, that that point was the main blockading station, and yet, when on their voyage, edging westerly all the time, away from Guantanamo and toward Santiago, they approached the blockading squadron at Santiago where the admiral's headquarters were, they sheered off and went due east to Guantanamo without inquiry.

As to the dependence and connection existing between a minor blockading operation in the same territory and the main blockade station, see the case of *The Nancy* (1 Acton's Privy Council Cases, 64).

As to the blockading record at Guantanamo, with especial reference to the commercial side thereof, the record in another case before this court, that of the *Newfoundland*, shows that that vessel was turned back by the squadron at Guantanamo in June. Justice Story says (Notes on the Principles and Practice of Prize Courts, p. 54) that even upon an original hearing papers found on board another captured ship may be invoked into the cause and used by the captors without an order for further proof. This rule would seem to apply to facts shown by the testimony *in preparatorio* in another cause. Lieutenant Anderson, testifying that the blockade at Guantanamo had been active, effectual, and continuous after June 8, speaks of another foreign vessel turned back.

It is evident, as the court below said, that the claimants' own testimony shows that the vessel in the control of a Spanish subject was being used with the owner's concurrence "to run the blockade in the absence of blockading vessels, or by practicing upon the credulity of American commanders," when this could be done with impunity.

III, IV.

Further proof was properly refused, and the testimony objected to was properly admitted.

The opinion of the court below (p. 57) states the established rule in prize cases, namely, that the papers and

examinations *in preparatorio* constitute the only evidence on which the cause is first heard, and that if upon this evidence there be doubt, or justice require it, the court may in its discretion order further proof. The rule is also stated by Mr. Justice Story in the case of *The Pizarro* (2 Wheat., 240), which notes the fact that if the prize courts should not exercise a sound discretion and should improperly deny or allow further proof, the appellate court can administer the proper relief.

The offer of further proof in the present case substantially showed either that the new evidence proposed was irrelevant (as, for instance, concerning the charterer's friendly relations with the Cuban insurgents and his good intentions toward citizens of the United States in Cuba), or else was contrary to the testimony given before the prize commissioners (as, for instance, that he was a loyal subject of Spain). The court below also calls attention to the fact that the proof *in preparatorio* was to the effect that the business of Solis was suspicious in the extreme; that he had been previously carrying on a large business in the shipping of supplies, and that now by the additional proof the claimant wishes to show that Solis was not engaged in trade with blockaded ports or with any ports of Cuba with which intercourse was unlawful. As to this the court remarks that Solis had ample opportunity to give such an explanation of the letters found on board, and that he should not afterwards be permitted to add to his testimony; that the letters related to trade and commerce, the conveyance of which through the blockade, especially by a Spanish subject, was a violation of the laws of neutrality.

The rule in reference to this subject is stated by Mr. Justice Story in *The Pizarro, supra:*

> Nor should the captured crew have been permitted to be reexamined in court. They are bound to declare the whole truth upon their first examination, and if they then fraudulently suppress any material facts they ought not to be indulged with an opportunity to disclose what they please or to give color to their former statements after counsel has been taken and they know the pressure of the cause. Public policy and justice equally point out the necessity of an inflexible adherence to this rule.

Now, it is to be noted that the charterer is to be treated as one of the crew; while he was charterer, and appears to have been a Spanish subject of influence and means, he was entered upon the ship's books as supercargo, and the animadversions of Justice Story in the *Pizarro* case are directed against a supercargo.

In *The Gray Jacket* (5 Wall., p. 368), Mr. Justice Swayne, speaking for the court, said:

> This is not a proper case for the order for further proof. The order is always made with extreme caution, and only where the ends of justice clearly require it. The claimant forfeited all right to ask it by the guilty concealment in his first affidavit. * * * The allowance would hold out the strongest temptation to subornation of perjury.

The general rule about the allowance of further proof is shown by the following quotations from Mr. Justice Story's notes in the appendix to volumes 1 and 2 of Wheaton's Reports, which are consolidated in the vol-

ume called "Notes on the Principles and Practice of Prize Courts." That volume is here cited (p. 18):

> It is therefore of the last importance to preserve the most rigid exactness as to the admission of evidence, since temptations would otherwise be held out to the captured crew to defeat the just rights of the captors by subsequent contrivances, explanations, and frauds. There can be no honest reason why the whole truth should not be told by the captured persons at the first examination, and if they then prevaricate or suppress important facts it must be from motives which would materially impair the credibility of their subsequent statements.
>
> The court is in no case concluded by the original evidence, but may order further proof on a doubt arising from any source or quarter, * * * but this is rarely done unless there be something in the original evidence which lays a suggestion for prosecuting the inquiry further (p. 24).

In the latter portion of this passage Justice Story is evidently considering, from what follows, the reverse case of the captors seeking further proof where the decree restores. The general principle is that "further proof is in no case a matter of right, and rests in the sound discretion of the court." (Id.) Further proof is not allowed to the captors if the cause (in favor of the claimants) does not appear doubtful upon the original papers and the answers to the standing interrogatories. Otherwise, if the parties have conducted themselves with good faith, the court will indulge them with time to supply defects of proof, though this privilege may be forfeited by either party through fraud or gross misconduct.

> Further proof is never allowed to the claimants where fraudulent papers have been used; where there

> has been a spoliation of papers; where there has been a fraudulent covering or suppression of an enemy's interest; where there is a false destination and false papers; nor, in general, where the case appears incapable of fair explanation or where there has been gross prevarication or an attempt to impose spurious claims upon the court, or such a want of good faith as shows that the parties can not safely be trusted with an order for further proof. (Id., 25, 26, and auth. cit.)

The claimants in the nineteenth specification of error specially complain because the court did not order the taking of Captain McCalla's testimony on the question of the delivery of the Spanish passport to him by Solis. The brief for the captors, filed in this case, shows clearly what evidence the claimants proposed to take under their motion for further proof, and they have never suggested in any way below that they wished to take Captain McCalla's testimony, which offer, however, if made, would have been properly refused by the court. We therefore submit that the discretion of the prize court was soundly exercised, and that the denial of the order for further proof (p. 49, opin. p. 57 *et seq.*, *passim*) was properly ordered.

As to the depositions *de bene esse*, the court below (pp. 62, 63), while mentioning the depositions, does not rely upon them, and holds that they are not "essential to the determination of this question now, although formerly submitted by the United States attorney as cause why the case should not be reopened." By section 4618, Revised Statutes, the United States attorney is directed to "see that the proper preparatory evidence is taken by the prize commissioners, and that the prize commission-

ers also take the depositions *de bene esse* of the prize crew and of other transient persons cognizant of any facts bearing on condemnation or distribution." The reason of this is obvious and natural; the testimony of the prize crew might be essential or important, and yet in their service they might at once pass beyond the control and reach of the court or the commissioners. This evidence might very properly have been used below, and is very properly in the record and before the court now, because it was a counter showing of evidence regularly and formally taken and was in opposition to the *ex parte* affidavit and statement shown at page 25 *et seq.* on behalf of the claimants; and for the other reasons given in the tender of the depositions by the United States (p. 48), especially as to the fact of the blockade and the position of the *Adula* when captured. Therefore, we respectfully submit, that if there is any real doubt in the mind of the court as to the liability of this vessel to condemnation on the testimony *in preparatorio* it is very proper in resolving such possible doubt to consider the depositions, which the law directs to be taken, and which contain the evidence of those best able to state the truth of the significant facts (if any real conflict be perceived) and who were subjected to the claimant's cross-examination.

As to the letter of Captain Yeats to his parents, dated July 13, containing a clipping of the New York Sun of June 29 (pp. 234–237), it is not clear how this letter came to be incorporated in the record. It was written after capture, but it was found on board, and apparently just before arrival at Savannah. For this reason it may be regarded as properly enough to be included with the

other papers turned in to the prize commissioners after arrival, and it may be rightly regarded and considered as an admission or confession, and as such to be taken strongly against the claimants. The significant points shown by it are that the captain had anticipated seizure; that Mr. Solis was a Spaniard; that after seizure everything went well until Mr. Solis "was spotted;" that the copy of the Sun publishing, on June 29, a Jamaica cablegram of June 28, told the story of the *Adula's* bringing to Kingston General Blanco's secretary and other Spanish military officers and agents, and that it was recognized in Kingston in view of all the facts that the *Adula's* trip contained a mystery covered by some plausible pretext or plea as to refugees or British subjects, the belief being that her secret mission was to communicate with Admiral Cervera or General Linares. The letter itself admits the presence of General Blanco's secretary, and anticipates the possibility of Mr. Solis being proved guilty of trying to carry dispatches. The cablegram in the Sun clipping also shows that it was fully known in Kingston that Admiral Sampson had previously said that if the *Adula* again tried to enter Cienfuegos she would be seized, and that the correspondent and presumably the inhabitants were awaiting the result of her now presenting herself at other south Cuban ports.

As to the brief for the appellant, it appears to deal in the main with the case as entitled to the application of certain ethical considerations and entitled to be decided on the humanitarian motive alleged, and to expect that possible future reforms in the character and methods of warfare should be viewed as justifying the release of the

the property involved here. The arguments of the brief are, we respectfully submit, completely answered by the references and replies thereto contained in the brief for the naval captors filed in the cause.

In conclusion, we respectfully point out to the court that this is a typical case of blockade running from a near point of vantage in neutral territory. The owners were dealing with both belligerents; they were serving one and using the other covertly and illegally. Their vessel had been employed and their agents had been engaged in hoodwinking the United States authorities upon professions of innocence and of a disinterested object during a considerable period of time and on many occasions. They were engaged in illegal and hazardous ventures, and they knew it, and took the risk. The guilty acts and the knowledge showing responsibility on the final fatal trip fully appear in this record. The neutral owners disregarded the obligations of their national neutrality and are subject to the immemorial penalty of prize law.

We respectfully submit that the decree of the court below, by which the vessel, her engines, furniture, provisions, supplies, etc., were condemned as lawful prize for an attempt to run the blockade as charged in the libel, as well as enemy property, be affirmed, and that the costs in accordance with the usual admiralty rule follow the decree.

HENRY M. HOYT,
Assistant Attorney-General.

8075——4

FILED
OCT 30 1899
JAMES H. McKENNEY,
Clerk.

No. 167.

Supreme Court of the United States.

Brief of Jos. K. McCammon & James H. Hayden for Captors.

OCTOBER TERM, 1899.

Filed Oct. 30, 1899.

THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, TACKLE, APPAREL, &c., THE ATLAS STEAMSHIP COMPANY (LIMITED), CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

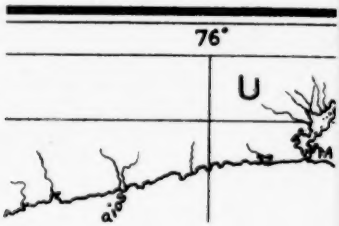
No. 167.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

BRIEF FOR THE CAPTORS.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
Of Counsel for Captors.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1899.



FOLD OUT IS TOO LARGE TO BE FILMED

Supreme Court of the United States.

OCTOBER TERM, 1899.

THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, TACKLE, APPAREL, &c.; THE ATLAS STEAMSHIP COMPANY (LIMITED), CLAIMANT, APPELLANT, *v.* THE UNITED STATES.	*No.* 167.

BRIEF FOR THE CAPTORS.

This is an appeal from a decree of the District Court of the United States for the Southern District of Georgia, by which the British Steamship *Adula* was condemned as a prize of war, for breach of blockade and also as enemy property.

The questions presented involve the legality and efficiency of the blockade; the adequacy of notice to shipping of neutral nations, in general, and to the *Adula*, in particular; and the neutrality of the vessel. To deal understandingly with these, we must review the progress of the war about the southern coast of Cuba, and the vessel's record for some weeks prior to her capture.

Statement of Facts.

The *Adula* was of 372 tons registry. She was built at Belfast, Ireland, in 1889 (pp. 88, 89), for her owner, the Atlas Steamship Company, Limited, a British corporation, and was registered in the name of one of its directors, W. B. Forwood, a British subject. Since 1889, she had been regularly employed in the coasting trade of Jamaica, and from time to time had made voyages between Kingston and Cuban ports (pp. 88–90, 95). An act of Congress approved on April 25, 1898, declared that a state of war between the United States and Spain had existed since April 21st. On April 22d, by proclamation of the President, formal notice was given of the blockade of many ports on the northern coast of Cuba and of Cienfuegos on the southern coast (pp. 211–212). An effective blockade was established, forthwith. About May 7, the *Adula* obtained from the United States a permit authorizing her to pass the blockade and proceed to Cienfuegos in ballast, for the purpose of taking on Cuban refugees (p. 35). This was issued by the United States consul at Kingston, with the approval of the Secretary of the Navy. She cleared from Kingston without a cargo. When approaching Cienfuegos, she was stopped by the blockading fleet, boarded by Lieut. Anderson of the U. S. S. *Marblehead*, and formally notified of the blockade through an endorsement in her log and the service of a copy of the President's proclamation. In consideration of her passport, she was allowed to enter Cienfuegos (p. 150). On May 21st, with a like permit, she made a second voyage from Kingston to Cienfuegos, in ballast, under charter to one Fowler (p. 36). Again she was stopped and boarded and was detained for some time by the blockading fleet before being allowed to pass (p. 192).

During her return voyage to Kingston, on May 26th, she did not sight a blockading vessel. On June 15th, she sailed, a third time for Cienfuegos with a cargo and under charter. Yeates, then first officer of the vessel, did not know whether the charterer was a Spaniard or not (p. 102). She had no passport for this voyage, but managed to enter Cienfuegos without interference and there delivered her cargo (pp. 96–102). Few persons took passage on her for Kingston. On the return voyage, she was boarded by an officer from the U. S. S. *Yankee*, who examined her papers. She was detained for some time, and when finally permitted to proceed, her master was warned again that the port of Cienfuegos was blockaded and that he must not attempt to enter it again. These facts were entered in the *Adula's* log (p. 196). After her capture a copy of a newspaper, published in Kingston, on June 25th, was found on board, which contained this:

> "* * * On board the *Adula* which arrived from Cienfuegos this week, there was an individual officially appointed by the Captain General in Cuba to make arrangements in Jamaica for regularly supplying the Spanish troops with provisions—in fact, to make Jamaica a base for Spanish purposes. This gentleman's name was given us as Ramon Pastora. He is accompanied by two pilots who know the south coast of Cuba perfectly."

On the first of June the United States fleet, under the command of Rear Admiral Sampson, established an actual and effective blockade of the port of Santiago, where lay the Spanish fleet under the command of Admiral Cervera. On the eighth of June, the blockade of Guantanamo Bay was established by order of Admiral Sampson, the blockading squadron being under the command of Commander McCalla, U. S. Navy. Both of these

blockades were maintained strictly and continuously throughout the war (pp. 148–149). During the month of June large numbers of marines and troops were landed about Guantanamo Bay. In its immediate vicinity, several engagements took place between the land forces of the United States and Spain, and the Spanish positions were frequently bombarded by the naval vessels lying in the bay. The Spaniards held the town of Guantanamo and many places in the vicinity until some four or five weeks later, but, on the ~~western~~ eastern shore of the bay, the United States forces established a base for the military campaign in progress against Santiago, and a coaling and supply station for the naval fleet. These events are matters of history. They became notorious, throughout the civilized world, almost as soon as they transpired. They were particularly well known in Kingston because intimate business relations had existed between Jamaica and Cuba and close cable communication was preserved during the war. Newspapers published in Kingston contained articles in which these military and naval operations were described (pp. 153–154). Copies of some of them were found on the *Adula* (pp. 159, 215–219).

On June 27th, by proclamation of the President, formal notice was given that the Cuban blockade had been extended and included all ports on the southern coast between Cape Frances and Cape Cruz. This included the port of Manzanillo. On the 28th it was made known to the vessels on blockade at Guantanamo (pp. 161–162).

On June 27th the *Adula*, then at Kingston, was engaged in taking on a cargo for shipment. On the 28th, she discharged this cargo and took on a large supply of coal (pp. 154–155). About the same time she was chartered to Jose R. Solis, a Spanish subject, formerly a resident of Manzanillo (pp. 89, 95). The charter-party

provided that her owners would put the vessel at the disposal of Solis for the conveyance of passengers from Manzanillo, Santiago, and Guantanamo, to Kingston, provided, however, that the charter should not be considered broken if the vessel were prevented from entering any of the Cuban ports named, for causes beyond her control; that if she were able to enter one or all of the ports she should embark the passengers engaged for her by Solis and proceed on her voyage, but if she were not permitted to enter any of the ports, she should return to Kingston, whereupon the voyage should be considered complete and the charter-money earned without deductions. Solis agreed to pay all port and pilot charges, to obtain proper clearances for each port, and to pay for the vessel at the rate of £100 for each day or part of a day for the first ten days of a voyage, and thereafter at the rate of £50 per day. The minimum charter-money was fixed at £500. It was further provided: "The Company will give the option to the charterer for another similar voyage on similar terms, provided the charterer gives the Company twenty-four hours' notice after the arrival of the steamer at Kingston" (pp. 168–169).

Immediately after signing the charter, Solis cabled to Santiago for a licensed Spanish pilot to meet the *Adula* (p. 187).

Forwood, the managing owner of the vessel, directed a letter of instructions to Yeates, her master, in which was enclosed a copy of the charter and orders directing him to proceed to Guantanamo, but warned him that he would find both that port and Santiago invested by vessels of the United States Navy. He was told to take no risk, but to stop, immediately, if ordered to do so, and in that event to endeavor to get permission to pass the blockade from the officer in command of the fleet. The letter advised him that Solis had

cabled for a pilot, licensed by the Spanish Government, to meet the *Adula* off Santiago and convey her into port (pp. 186–187). By a private verbal agreement made between Solis and the owners, it was arranged that after proceeding to Guantanamo, Santiago, and Manzanillo, the vessel should call at other ports to be indicated to the master by Solis. Instructions to this effect were given the master (pp. 97, 18th answer; 101, 39th answer). It appears from correspondence found on the *Adula*, in Solis's possession, that during the war he had carried on an extensive business in the way of shipping supplies to Cuban ports, held by Spain, and transporting passengers from Cuba to Jamaica. He had just returned from Manzanillo, which was then held by Spain. These facts were known to the Atlas Company before the charter was signed. Solis testified that he had no object other than to transport Cuban refugees to Jamaica, and that he was actuated by humanitarian motives; but he admitted that he had found the business profitable, and that he expected to make a large profit out of the voyage of the *Adula* (p. 110). Although she carried no cargo, Solis was enrolled on the ship's books as "supercargo," or assistant to the purser (p. 92). He testified that the agents of the vessel advised him to join the ship's company in that capacity to avoid any difficulties which might arise from his sailing as a passenger or as the charterer (p. 105). Pursuant to his agreement with the owners, he obtained from the Spanish consul at Kingston a passport authorizing him to take the *Adula* into any Spanish port (106, 12th). Solis testified that he delivered all of his papers to Commander McCalla, of the U. S. S. *Marblehead*, but this passport was not found among those delivered to the prize master or the prize commissioners. He said (p. 111):

"I had a document about which I told you before, that I obtained from the Spanish consul in Kingston, in which document it says to the authorities of any Spanish port where the *Adula* may go to allow Mr. Solis to take out passengers, since he does it for the sake of humanity. That is what I understand it says on the paper."

The ship's bill of health, described her as bound for Manzanillo, Guantanamo, and Santiago. It bore an endorsement of approval by the Spanish counsel (pp. 89, 96, 219). Solis also tried to get a passport for the voyage from Dent, the United States consul, who refused to give it (p. 152). In his deposition, Solis said (p. 113):

"I knew there were troops and vessels in Caymanera Bay or Guantanamo Bay, as you call it. I knew that perhaps the day before [June 26th]. I do not remember exactly. I do not remember anything about the President declaring the blockade. I did not know anything officially until I arrived at Caymenera or Guantanamo. . . . I went to Consul Dent's office and asked permission to go to those ports [Guantanamo, Santiago, Manzanillo]. He asked me whether I had the consent of the Spanish consul. I said I had it. Then he said to me he was sorry he could not give me such permission; that he was not allowed to give such permission; that it could only come from Washington, from the Government. I saw there was no time to get permission from Washington, and being under an expense of one hundred pounds every day and thinking there was nothing wrong in taking refugees from Cuba, I thought;—going direct to the United States Navy and asking permission from the Admiral, or Commodore or whatever chief I met, I did not think they would refuse me permission to go. I had information there were United States vessels on the south coast of Cuba. Of course, their object was to do as much

> damage as they could to the enemy. Mr. Dent told me not to go. I do not remember his giving any particular reason for not going. . . . He said to me he could not give me permission. Then I said to him I decided to go and I do not think there will be any harm for me, since I did not go for any bad thing, but only to bring refugees. I did not think I did any harm to the United States in that. I do not remember Mr. Dent telling me the vessel would be liable to capture. He said I ought not to go and that he could not give me such permission."

He repeated the substance of this conversation to Yeates, the master of the *Adula*, before she put to sea (p. 170).

A few minutes before she sailed from Kingston, Dent went to the office of the Atlas Steamship Company and warned W. P. Forwood, its agent, of the blockade of Guantanamo, and told him that Solis was suspected of being a secret agent of the Spanish government. Forwood admits that Dent said: "Well, Forwood, I would not advise you to let the ship go. They won't let her into Guantanamo, and they will be watching for her" (p. 34).

Solis testified (p. 108, 21st ans.):

> "They told me on board the *Adula* that the blockade of Guantanamo was published on the 27th, the day before."

Solis had in his possession, on board the vessel, a large number of letters which he had undertaken to deliver in Cuba. One of them was directed to a resident of the blockaded port of Manzanillo and contained this paragraph (p. 223):

> "After six weeks of having been unable to write to you on account of the presence of the American

squadron before that port, to-day I am told with great secrecy that Mr. Solis of Manzanillo, with the steamer *Adula*, English, is going to run the blockade to carry provisions or take out passengers. I take this opportunity, with great pleasure, of hearing from you and of my house. We know no other news here than that from American sources; otherwise this town is very tranquil, and everybody respects us as we mix with no one."

Forwood and Yeates, the master, Solis, and other members of the captured crew, who were examined *in preparatorio*, admitted that they knew of the military and naval operations about the southern coast of Cuba and knew that Santiago and Guantanamo were closely invested by the United States forces. Horatio Morris, one of the crew, testified (p. 118):

"At the time we sailed for Guantanamo I knew that war was going on between the United States and Cuba. Guantanamo is in Cuba, and I knew that war was going on between Cuba and the United States. About three days before I left Kingston I heard that Guantanamo was blockaded; I heard it from people around the streets; I didn't see it; I heard it was in the papers."

The *Adula* sailed from Kingston about half past five o'clock on the afternoon of the 28th.

Her log-book was put in evidence and the pages containing entries made for the 28th and 29th are reproduced in this record (pp. 198, 199). But it is impossible to ascertain the courses steered and the progress made by the vessel because the various entries are utterly inconsistent and tend to show that she was in different places at the same time. Besides, they are at variance with the testimony of Yeates, the master, and members of the crew.

A chart, contained in the record sent up by the prize court (Exhibit B, referred to on page 156) represents the island of Jamaica, with parts of Cuba and Hayti, and the adjoining seas. It is one of those published by the Hydrographic Office of the Navy Department. Lieut. Anderson, U. S. Navy, has located upon it the various courses and positions of the *Adula* as represented by her log entries (pp. 198–199, 156). The plat at the beginning of this brief was prepared by the Hydrographic Office. It reproduces from the chart the outline of the eastern portion of Jamaica, the western portion of Hayti, the southeastern coast of Cuba, the positions of the ports of Kingston, Santiago, and Guantanamo, and the courses and positions of the *Adula*. The scale of nautical miles, appended by the Hydrographic Office, is accurate, and may be verified by comparison with a degree of longitude.

The entry in the log for June 28, under the heading "Remarks," gives the bearing of Morant Point, the eastern point of Jamaica, at 11.15 p. m. as north-northwest by north, and the distance then traveled by the vessel, shown by her patent log, as forty-one knots. These two factors locate her about the point *A*. The entries represent that at 11.15 p. m. she changed her course to north-northeast, represented by the line *A B*, which course was held until 7.30 a. m. on the 29th. In the interval of eight and a quarter hours, at the rate of eight knots an hour, which is the rate represented by her log (see heading K), the *Adula* would have covered sixty-six miles and reached a point on the line *A B* a little to the southward of the point *B*. It does not seem possible that this course could have been taken: (1) because it would have carried the vessel over the Cleft Rocks of danger off Formigas Bank, where the water, as indicated on the plat, is very shallow; (2) be-

cause, if continued, it would have carried her to the eastward of Guantanamo.

It is represented that at 7.30 a. m. on the 29th the course was changed to north-northeast, one-half east, represented by the line *BFC*, and that this course was held until one o'clock. The noon entry for the 29th represents the *Adula's* latitude by dead reckoning, computed by her master, and also ascertained by his noon observation, as 19° 36′ north, which, on the course *BFC*, would place the vessel at the point *C*. At the rate of eight knots an hour, during the interval of twelve and three-quarters hours intervening after she left the point *A*, she would have covered exactly 102 miles, and only reached the point *F*, over sixteen miles to the southward of her noon latitude as entered in the log. The entry of her longitude at noon, as computed by dead reckoning, is given as 75° 26′ west. This would place her at the point *D*, six miles to the westward of the point *C*. If at noon she had been at the point *C*, by holding her course north-northeast one-half east (represented by the line *BFC*) she would have been carried directly to the entrance of Guantanamo Bay. If she had been at *D*, the mouth of the bay would have borne about northeast by north. But she held her easterly course until 1 p. m., only when it was changed to north by west. No rate of speed is entered after that for noon, but at two o'clock, holding a course north by west, she would have been very close in to the Cuban coast, about seven miles to the southwest of Guantanamo Bay with Santiago distant about thirty-three miles, and bearing about west-northwest. Under the heading "Remarks" (p. 199) there is an entry to the effect that, at two o'clock, being about five miles off shore, she sighted several war vessels to the westward, off Santiago harbor, which bore about north-

west by west. With the entrance to Santiago harbor bearing northwest by west, a vessel on the course *A BFC* would have been about the point *C*, and a vessel in longitude 75° 26′ west, or thereabout, would have been a very short distance north of the point *D*. In either case she would have been over fifteen miles from the Cuban coast, and over 30 miles from Santiago.

The same entry continues that, at 2 p. m., upon sighting the blockading fleet, the *Adula* steered coastwise for Guantanamo, and the entry at the bottom of the page states that she arrived off the entrance of the bay at 4 p. m. This is incredible because she would not have occupied two hours in running seven miles, and she would not have run coastwise. If, however, she had been at the point *C* or *D*, her distance from the entrance of Guantanamo Bay would have been upwards of eighteen miles, and at her indicated speed of eight knots, she could barely have reached it at 4 p. m., if she had followed a direct course.

Yeates, the master, testified (p. 100, 35th) that all the papers found on board the *Adula* were true and correct, and that he knew of no matter or circumstance to affect their accuracy or credit. It seems, however, that the log entries standing alone are inconsistent and misleading. Yeates said (p. 96, 12th):

> " . . . On this last voyage we passed near Port Royal, Jamaica, and then we came within seven or eight or ten miles of Santiago. The reason for our going by Santiago was on account of my not being acquainted with the coastline to the eastward of Santiago, and I had no large scale chart, and therefore I steered more to the westward than I should have done, and I went more to the westward to make out the land, because I knew the coast about Santiago and I did not know the coast about Guantanamo Bay."

The noon entry for June 29th (p. 199) under the heading "Bearing and Distance," is this: "Nine a. m. Sighted high land, Cuba." Entries for the same hour under the heading, "Remarks," show that the weather was cloudy with occasional rain, and the noon entry shows that the sun was obscured. If at 7.30 a. m. the *Adula* was about the point *B*, at 9 o'clock, having steamed at the rate of eight knots an hour, she would have been only twelve miles to the northward and more than thirty-five miles from the Cuban coast. To sight it in cloudy weather, at such a distance, would be impossible.

Again: the course indicated by the log entries is practically a direct one from off the eastern point of Jamaica to Guantanamo Bay. Nowhere upon it would the *Adula* have come within "seven, eight, or ten," or even thirty miles of Santiago. Yeates testified further (p. 100, 36th):

> " . . . On leaving Kingston we did not steer direct for the port of Guantanamo, as I said before, on account of not being acquainted with the land. I steered to the westward of the port we were bound to. I was not steering in a direct course, as you can see by the log-book, on account of not being acquainted with the coast to the east of Santiago; so I steered to the westward. We just ran down the coast. We were sailing a little wide of the port where the ship was destined. I do not remember the course exactly that I laid for Guantanamo. I may have been a point and a half or two points off my course to the westward, with the object of picking up this land that I was acquainted with and then running down the coast to Guantanamo Bay. I could not take any observations on that day, because it was cloudy and I wanted to get to a point that I knew about. When I sighted land, we were between Guantanamo Bay and Santiago. I do not know how far we were from Santiago. I believe we went to

within about ten miles of Santiago. I recognized the highlands around Santiago. I won't say it was ten miles; it might have been ten miles. Our course was not altered to any other port except Guantanamo. That was the point we were steering for. I do not know what time the ship's course was altered for Guantanamo. That information is down in the log-book. We first made for the land that I knew, and then, when we made out the land, we altered the course and went down to Santiago. Previously to steering for Guantanamo, I was steering to the westward and I saw several ships there and I imagined I would be stopped by some of them, and I slowed down the engines and I steered about a quarter of a mile in the direction towards Santiago. However, as I was not stopped, I turned around and steered direct for Guantanamo, but I was in proximity to Santiago. My reason for changing my course was seeing vessels at Santiago and I expected to be stopped and I changed my course from west to eastward and then I changed around to the westward. The first time I changed around to the eastward to come to these vessels, and when I found there was no vessels approaching us, I then turned right around and turned to the eastward and hauled for the eastward for Guantanamo Bay."

The blockading fleet off Santiago was composed of vessels without heavy top hamper, in fact they had only short pole masts and they were painted a dull gray which made them very hard to discover. The *Adula* could not have sighted them at a greater distance than ten miles. The entry in her log, which represents that she sighted them for the first time at 2 p. m., cannot be correct. The distance between Santiago and Guantanamo is about forty miles. Now, granting that at the time of sighting the blockading fleet, the *Adula* was ten miles from them, and they were five miles to the eastward of Santiago, she would have

been twenty-five miles from Guantanamo Bay where she arrived at 4 p. m. She could not have covered the twenty-five miles in the interval of two hours. To do so she would have been obliged to maintain a speed of twelve and one half knots an hour, whereas she could make but little over eight. No attempt was made to get permission to pass the blockade from the fleet off Santiago or to find the pilot for whom Solis had cabled. As the *Adula* approached Guantanamo Bay she could not see the U. S. S. *Marblehead* and other vessels blockading the port because they lay within the bay, behind headlands. She was within a half a mile of the entrance to the harbor when they were discovered, and she was so close upon them that escape would have been impossible (pp. 175, 185). Just as the Bay opened to view she was stopped by the U. S. S. *Vixen*, then passing out to sea. Horatio Morris, one of the captured crew, testified (p. 119) that the *Vixen* asked whether the *Adula* had not seen the blockading fleet off Santiago and whether she did not know that Guantanamo was blockaded and that Yeates, the master, replied "Yes" to both questions. The *Vixen* then told her to proceed into the bay. She did so, and came to anchor where she was seized by the U. S. S. *Marblehead* (pp. 88, 92, 98–99).

After the capture, Yeates wrote a letter to his parents, in which he said: "And now to tell you, dear ones, how it is, or was, that we got into this pickle, which has not come as any surprise, as I have anticipated it for some time" (p. 234).

On July 10th she was sent to Savannah in charge of a prize crew, arriving there on the 16th. She and her cargo were duly libeled on the 21st (pp. 1–4). On the 26th the Atlas Steamship Company filed a formal claim to the vessel (p. 6). It also presented a petition for her relief

on stipulation for her value (pp. 8–13). This contained allegation purporting to state her ownership; her record between the outbreak of the war and the time of her capture; the state of the blockade of the southern coast of Cuba in general and of the ports of Guantanamo, Santiago, and Manzanillo in particular; the terms of the charter-party, under which she sailed, and the objects of the voyage.

On July 27th the prize commissioners filed their report (pp. 19–21). With it they transmitted the ship's papers and the depositions taken *in preparatorio*, which were those of Yeates, the master, Solis, the charterer and supercargo, James Clarkson, acting chief officer, David Hamilton, quartermaster, John Darling, quartermaster, James C. Williamson, purser, and Horatio Morris, sailor. They also filed two affidavits made by Lieut. Anderson, the prize master: one containing a list of the papers found on board the *Adula*, the other identifying the newspapers found upon her; also claims for prize money which had been filed with the prize commission on behalf of the officers and men of the naval vessels at Guantanamo; and three depositions, taken *de bene esse*, of the prize master, and two members of his crew. These depositions had been taken in the presence of counsel for the United States and the claimants pursuant to a written stipulation (p. 175).

On July 27, counsel for both parties entered into a stipulation by which it was agreed that the hearing of the cause, upon the evidence taken *in preparatorio* and on the papers and documents sent up by the prize commissioners and the claimant's petition, should proceed on that day, and that the claimant's answer should be filed on the following day. This was approved by the court and the hearing was had forthwith (p. 13).

On the 28th, the court entered a decree of condemnation whereby the vessel was pronounced a good and lawful prize for the breach of the blockade and also as enemy property (p. 24).

On the 27th the claimant filed its answer (pp. 14–19). It was verified by an agent of the company who resided in Georgia, and who had no personal knowledge of the facts. It denied that the *Adula* during her last voyage and at the time of her capture, was in any way subject to the direction or control of Solis. It denied that the blockades of Cienfuegos, Manzanillo, Santiago, and Guantanamo were actual and effective, or that the blockade of the three ports last named was properly proclaimed or was a matter known throughout the civilized world or well known in Kingston. It denied that the official notification of the blockade was given out in Kingston by the British government on June 28, or prior to July 6. It denied that, prior to the sailing of the *Adula* from Kingston on June 28, the United States consul refused to give her a passport because her prospective ports of call were blockaded. It asserted that the *Adula* never intended to enter any port, invested by the United States naval forces, without obtaining permission to do so, and that she would have desisted from her attempt to enter Guantanamo Bay had she been met by a United States vessel and ordered not to go there; and that the object of her voyage was purely humanitarian and could not be considered a violation of the blockade.

On the 28th, the claimant moved the court to order further proof respecting various matters alleged in the libel (p. 19). In support of this motion, the claimant filed two affidavits; one was made by Robert Gemmel, the agent of the company in New York (pp. 25–35). All averments of fact contained in it were made upon infor-

mation and belief. The other affidavit was made by W. P. Forwood, the agent of the company at Kingston (pp. 35–40). The former repeated allegations of fact contained in the claimant's petition and answer, and described the further proofs which the claimant wished to take. Appended to it was a paper described as a copy of extracts from a letter written by Forwood to the affiant. In his affidavit Forwood did not repeat the statements made in his letter to Gemmel; but simply described the charters of the *Adula* during May and June of 1898.

On behalf of the United States an answer to the claimant's motion was filed (pp. 40–48). It reviewed in detail the evidence taken *in preparatorio*, comparing it with the allegations contained in the claimant's affidavits and answer. In further opposition to the motion and in lieu of counter affidavits, the attorney for the United States offered the deposition of Lieut. Anderson, and Ellenburg and Gill, of the prize crew, taken *de bene esse*, as heretofore noted.

These were offered for the purpose of furnishing additional proof of the establishment of an effective blockade of Guantanamo Bay on June 8th; that an actual and continuous blockade of Cienfuegos, Santiago and Guantanamo was maintained until after June 29th; and that Lieut. Anderson delivered to the master of the *Adula* on May 9th a copy of the President's proclamation of April 22, 1898, declaring the blockade of Cienfuegos and other ports; also to show that the *Adula* was within the three-mile limit and was proceeding directly into Guantanamo Bay when seized (pp. 40–49).

The motion was heard on the pleadings and proofs already of record, the affidavits presented by the claimant, the answer of the United States and the testimony taken *de bene esse*. It was overruled (pp. 49 and 50). An appeal to this court was thereupon taken and perfected.

Subsequently, on the application of the Atlas Company, the vessel was released upon a stipulation for value, which had been duly fixed at $50,000 (pp. 247–248).

On this appeal the claimant presents thirty-seven assignments of error. By these it is asserted that the Prize Court erred: (1) In permitting the introduction in evidence of the deposition of members of the prize crew taken *de bene esse*, and of a personal letter, written by the master of the *Adula* after her capture, which was transmitted to the Court with the report of the Prize Commissioners (I, XIV, XV, pp. 238, 239). (2) In holding that, for the purpose of the voyage, the *Adula* was a Spanish ship and that the burden of proving her neutral character at the time of her capture rested on the claimant (II, III, IV, V, IX, XVIII, XIX, XX, XXI, XXVIII, XXX, and XXXIV, pp. 239–241). (3) In holding that the blockades in question were lawful, actual and effective (VI, VII, VIII, and X, p. 239). (4) In holding that the *Adula* was guilty of a breach of the blockade of Guantanamo Bay on June 29th, and that she had previously run other blockades, and purposed to do so in the course of the voyage on which she was engaged when captured (XI, XII, XIII, XVI, XVII, XXII, XXVII, XXIX, XXXI, XXXII, XXXIII, and XXXV, pp. 239–241), and (5) In refusing to allow the claimant to take further proofs (XXIII, XXIV, XXV, and XXVI, p. 240).

We shall discuss the questions raised in their order.

FIRST.

The depositions of members of the prize crew taken de bene esse were not admitted in evidence. Their acceptance in lieu of counter affidavits, upon the hearing of the claimant's motion for leave to take further proof, was proper. The admission of a letter directed by the master of the "Adula" to his parents, after the capture of the vessel, was proper.

The claimant is wrong in saying that the depositions of Anderson, Ellenburg, and Gill were admitted in evidence. The Prize Court's statement with regard to this should be sufficient. It said (p. 58):

> "The hearing upon the proceedings for condemnation was upon the evidence afforded by the examinations of the captured crew taken upon standing interrogatories, the ship's papers and other evidence of a documentary character found upon the ship by the captors. This was done in conformity to the established rules in prize causes. 'These [the ship's] papers and examinations *in preparatorio* constitute the only evidence on which the cause is first heard. If, on this evidence, there be doubt, or justice require it, the Court may in its discretion order further proof.'"

The assertion is further disproved by the decree of condemnation, in which it is stated (p. 24):

> "The above stated cause came on to be heard before the Court upon the pleadings and upon the documents, papers, &c., and testimony taken, *in preparatorio*, before the Prize Commissioners and sent up to the Court in conformity with the law and practice in such case . . . "

Furthermore, these depositions might properly have been offered and admitted in evidence along with other proofs sent up by the Prize Commissioners. Prior to the hearing of the cause, this stipulation was made by counsel for both parties and approved in open court (p. 13):

> "It is agreed between the parties, by their respective proctors of record, that the hearing on the evidence taken in preparation, *and on the papers, documents, &c., sent up by the Prize Commissioners* in the above-stated cause and on claimant's petition, proceed to-day before the Court."

The depositions had been taken after notice to the master of the *Adula* and the claimant's counsel, and pursuant to a stipulation in writing signed by both, in which it provided (p. 175):

> "Service of a copy of the above notice acknowledged, and it is agreed that said depositions may be taken orally on examination, cross-examination, and re-examination by counsel of the respective parties before the said Prize Commissioners, and that the testimony may be taken down stenographically and reported in typewriter by a stenographer to be appointed by the Prize Commissioners, *and when signed by the respective deponents shall be reported by the Prize Commissioners in usual form.*"

That they were transmitted by the Prize Commissioners along with other proofs is shown by the specific mention made of them in the Commissioners' report (p. 20).

The fact is that these depositions were not offered by the United States and were not considered by the Court until the hearing of the claimant's motion for leave to take further proof. It is worthy of note that they had no influence upon the Court's disposition of the motion. In speaking of them, the Court said (p. 62):

> "This testimony was not before the Court on the hearing of the evidence taken *in preparatorio*, nor is it essential to the determination of this question now, although formally submitted by the United States attorney as cause why the case should not be re-opened."

The claimant in support of its motion for leave to take further proofs filed two affidavits and an answer to the libel. One of the affidavits and the answer were verified by two of the claimant's agents, residing in different parts of this country, who had no personal knowledge of the facts. The depositions taken *de bene esse* certainly were of more value as proofs and were competent as a showing counter to that made by the claimant.

The letter, written by Yeates the master to his parents on July 13th, was seized before the vessel reached Savannah. The writer was an agent of the owners, whose admissions concerning the *Adula's* conduct during the war and the circumstances attending her last voyage were binding upon his principals. It was duly produced before the Prize Commissioners and transmitted to the Court. It was clearly an admissible document.

SECOND.

The "Adula" at the time of her capture was under the control of a loyal Spanish subject, and was, for all purposes of the voyage on which she was bound, a Spanish vessel. If, under these circumstances, she could have established a neutral character, the burden of doing so rested upon her.

Solis, the charterer of the vessel, who, by advice of the claimant's agents, was enrolled on the ship's books in the

humble capacity of "supercargo," admitted that he had remained a loyal subject of Spain throughout the Cuban war (p. 104). It is but reasonable to assume that during the latter part of June, when Santiago and other places of military importance, on the southern coast of Cuba, were closely invested by the United States forces, Spanish officials would have been careful not to allow any, but men of whose loyalty they were sure, to enter their beleaguered cities and thus have an opportunity to carry information to Cuban sympathizers, or to bring reports to agents of the United States. It is proven that the Spanish consul at Kingston had refused to issue passports for Santiago and other ports (p. 114). The cause of Spain had nothing to gain by allowing a vessel without a cargo to enter Cuban ports and depart with Cuban refugees unless she brought or carried out information. It is claimed that the getting of refugees was the sole object of the *Adula's* voyage. Yet Solis appeared to have the ear of the Spanish consul and his implicit confidence. He had a personal passport authorizing him to travel where he pleased. He had no difficulty in obtaining a passport which authorized him to take the *Adula* into any Spanish port. In spite of the risks of war which caused others to desist from trade with Cuba, Solis appears to have been successful in continuing an extensive business. His private correspondence captured with the *Adula* proves it. He persistently refused to heed the warning of the United States consul, who told him that he could not enter Guantanamo, Santiago, or Manzanillo. In his evidence he displayed great cleverness in dwelling upon the humanitarian side of his ventures, claiming that it was his primary object to alleviate the horrors of war, but he admitted that his humanitarian zeal had been rewarded by considerable profits and that he expected to make $19,000 out of the *Adula's* voyage.

So much for Solis. Now take the status of the *Adulu*. Although she had always sailed under the British flag and her ownership and registry were British, her record during the war contained incidents not consistent with neutrality. Twice, earlier in the war, her owners had appreciated the necessity of obtaining from Washington, permits to pass the blockade of Cienfuegos. On both of these occasions they had pleaded the humanitarian object of her voyage as a reason for special indulgence. On both voyages they fulfilled their promise to carry no cargo. On the second voyage, the vessel came out of Cienfuegos without encountering a blockade vessel. Encouraged by this, her owners decided to send her again, this time without a passport and with a cargo of supplies. She succeeded in running the blockade, but on her return trip was stopped by a blockading vessel. She might well have then been made a prize of war because she had received abundant notice of the blockade on both of her prior voyages, but she was allowed to proceed after a very positive warning. On her last voyage the vessel was under the control of Solis. Her master had been instructed privately to take her to any Cuban port designated by him, after calling at Guantanamo, Santiago, and Manzanillo. He was also instructed to receive on board any persons whom Solis might produce. He was not authorized to inquire whether any of them were Spanish agents, and was given no discretion in the way of refusing to receive persons whom he might regard with suspicion. Before she sailed for Guantanamo on June 28th, Forwood, the managing owner of the vessel, was notified by Dent, the United States consul, that Solis was under suspicion, and admitted that he had made some investigation concerning his character. Forwood was warned by Dent not to permit his ship to sail and that she would be liable to capture if she did. He

persisted in disregarding these things. It was a condition upon which the vessel was chartered that Solis should obtain clearances for all ports. Forwood and Yeates knew that he had obtained a Spanish passport, and that one had been refused by the United States consul (pp. 94, 96, 106). The Spanish passport was an enemy's license, and the fact that it was obtained for the use of the *Adula* in entering enemies' ports rendered her liable to seizure:

The Aurora, 8 *Cranch*, 203.
The Julia, 8 *Cranch*, 181.

The mere fact of sailing under such a license would have rendered the vessel liable to confiscation, without regard to the object of her voyage or the port of her destination.

The Ariadne, 2 *Wheat.* 143, 147–148.
The Hiram, 1 *Wheat.* 440, 447.

It is the right of a captured vessel to have the cause, in the first instance, determined upon her papers and the testimony of the captured crew whose interests are hers. But it is the duty of the captured crew to tell the whole truth. In the present case the proofs duly taken *in preparatorio* failed to establish the neutrality of the vessel, and her condemnation was inevitable. By the settled rule of prize courts the *onus probandi* of a neutral interest rests on the claimant.

3 *Wharton's International L. D., Sec.* 230.
The Jennie, 5 *Wall.* 183, 188.
The Amiable Isabella, 6 *Wheaton*, 1, 78.

THIRD.

The Blockades of Guantanamo and Santiago were lawful, actual, and effective.

The blockades of Santiago and Guantanamo were established during the early part of June, by order of Admiral Sampson, Commander-in-Chief of the United States Naval force then investing the ports on the southern coast of Cuba, and were maintained as actual and effective blockades until long after the *Adula's* capture.

Investments and blockades so ordered and so maintained have always been recognized as lawful. In the Treaty of Amity, Commerce and Navigation concluded between his Britannic Majesty and the United States, on October 19, 1794, it was provided (Article XVIII):

> ". . . And whereas it frequently happens that vessels sail for a port or place belonging to an enemy without knowing that the same is either besieged, blockaded, or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place; but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless, after notice, she shall again attempt to enter, but she shall be permitted to go to any other port or place she may think proper. . . ."

Here is an express recognition by Great Britain of what are termed simple blockades. Throughout the war of the Rebellion, Great Britain was consistent in maintaining that the true test of the validity of a blockade is its actual existence and its efficiency. They are to be distinguished from blockades proclaimed by governmental notice in these respects alone. In due course, after the proclamation of a governmental proclamation, neutral

vessels are presumed to have notice of the blockade and its continued maintenance. In the case of a simple blockade, the captors must prove that the blockade was actual at the time of seizure, and they must prove that the captured vessel had come after notice, or its equivalent—actual knowledge.

In the case of the *Circassian*, 2 *Wall.* 135, 150, it was said:

> "A simple blockade may be established by a naval officer, acting upon his own discretion, or under direction of superiors, without governmental notification, while a public blockade is not only established, in fact, but is notified by the government directing it to other governments. In the case of a simple blockade, the captors are bound to prove its existence at the time of capture, while in the case of a public blockade the claimants are held to proof of discontinuance in order to protect themselves from the penalties of attempted violation."

In *Duer on Insurance* (*p.* 60, *Sec.* 44) the rule with regard to simple blockades is stated thus:

> "It seems a just inference from the decisions that where a blockade was constituted simply by the fact of an investment, although its existence was known at the port of departure previous to the sailing of the neutral ship, she may clear out provisionally for the blockaded port, but that in this case, as in former cases, the inquiry upon the result of which the right to complete the voyage must depend, must be made at a port of the blockading state or of a neutral power. I see no reason to doubt that the prohibition to proceed to the mouth of a blockaded port embraces all cases of previous knowledge from whatever sources the knowledge may have been derived, and that in all its violations is subject to the same penalty."

The *Adula* and her owners had adequate notice of the blockade. It is proven that the existence of the investment of Guantanamo Bay and its actual blockade was known in Kingston before the *Adula* sailed and was known to her managing owner, master, charterer and members of her crew, and that, in spite of repeated warnings, she sailed to Guantanamo, without any attempt whatsoever to gain further knowledge of the conditions existing there.

By its answer the claimant contends that in Kingston it was supposed that the port of Guantanamo was completely within the possession and control of the United States and therefore that the blockade had been terminated. We have seen that the town of Guantanamo, a short distance inland, near the head of the bay, was held by a Spanish force, as were several other positions in the neighborhood. The military campaign in the vicinity was in active progress and encounters between the United States and Spanish troops were of frequent occurrence. The United States held positions on the western side of the bay, which had been occupied as a base for the military campaign and as a coaling and supply station for the fleet, but it did not hold possession of the port and the necessity for the blockade continued.

In the case of the *Circassian* (*supra*), it appeared that a British merchant steamer was captured on the 4th of May, 1862, for attempting to violate the blockade of New Orleans. During the last days of April the city of New Orleans and the forts commanding its approaches from the Gulf of Mexico had been captured by the Federal forces, and on the 1st of May they took military possession of the city. The court said (p. 151):

> "The object of blockade is to destroy the commerce of the enemy and cripple its resources by ar-

resting the import of supplies or the export of products. It may be made effectual by batteries ashore, as well as by ships afloat. In the case of an inland port, the most effective blockade would be maintained by batteries commanding the river or inlet by which it may be approached, supported by a naval force sufficient to warn off innocent and capture offending vessels attempting to enter. The capture of the forts, then, did not terminate the blockade in New Orleans, but, on the contrary, made it more complete and absolute. Was it terminated by the military occupation of the city?

"The blockade of the ports of the insurgent states was declared from the first by the American Government to be a blockade of the whole coast, and so it has been understood by all governments. The blockade of New Orleans was a part of this general blockade. It applied not to the city alone, but controlled the port, which includes the whole parish of New Orleans and lies on both sides of the Mississippi and all the ports on that river and on the lakes east of the city.

"Now it may be well enough conceded that a continuous and complete possession of the city and the port, and of the approaches from the gulf, would make a blockade unnecessary and would supersede it. But at the time of the capture of the *Circassian* there had been no such possession. Only the city was occupied, not the port; much less the district of country commercially dependent upon it, and blockaded by its blockade. Even the city had been occupied only three days. It was yet hostile. The rebel army was in the neighborhood; the occupation, limited and recent, was subject to all the vicissitudes of war. Such an occupation could not, at once, of itself, supersede or suspend the blockade."

The appellant suggests that this great authority was effectually reversed by an award of the International tribunal created pursuant to the treaty of Washington,

which awarded damages to the owners of the *Circassian*. The work of such a tribunal resembles more a business negotiation than an adjudication of rights. Its awards are based upon expediency and policy more than upon rules of law. Certainly they cannot reverse or control the decisions of this court. Hence these blockades were lawful, and were binding upon all neutral vessels which, like the *Adula*, had adequate notice of them.

The conduct of the claimant's agents discredits the position which it now attempts to take. If they had really supposed that the port and harbor of Guantanamo were in the control of the United States and that the blockade had been terminated, why was Forwood so particular in his warning to the master of the *Adula*, that he would meet United States vessels off that port and would doubtless be stopped? Why did he require Solis, a Spaniard, to obtain clearances for all ports? Why was he satisfied with the passport obtained for the *Adula* from the Spanish consul at Kingston? Why did he have the vessel's bill of health for Guantanamo viséd by the Spanish consul? Why did he disregard the United States consul's advice? These will be hard questions for the claimant to answer.

Williamson, the ship's purser, testified (p. 90):

> "Guantanamo is in Cuba. When we left Kingston we understood it was Spanish territory."

The claimant contends that the joint resolution of the Senate and House of Representatives, approved on April 20, 1890, 30 Stat. L. 739, whereby it was declared: "That the people of Cuba are, and of right ought to be, free and independent," precluded the United States, thereafter, from treating any part of Cuba as hostile territory, or maintaining a blockade of any port, therein. This is absurd. The

freedom of the "*people*" was recognized, not that of the territory, nor was the national existence of Cuba, recognized. In our civil war the blockades of southern ports were not terminated by the Emancipation Proclamation. Spain's hold upon the Island of Cuba was strong. Spanish forces were strongly fortified in many of its ports. The Cuban insurgents had made little or no impression upon them. It cost the lives of many of our people and millions of dollars to compel Spain to relinquish its sovereignty. At the close of the war, Spain still held Havana and many other places. The blockade proved our most effective means of prosecuting the war to a speedy termination and prevented many battles and sieges. It cut off from sources of supply, territory which was under the absolute military control and government of Spain. Such blockades have always been held lawful, and will be so long as war continues to be the final arbiter of national differences.

Some comment may be made upon the fact that the President's proclamation of June 27th did not declare the blockade of Guantanamo and Santiago, but the reason for their omission is apparent. No extensive military or naval operations were in progress about other ports on the southern coast of Cuba, and a Governmental notification of the blockade was necessary for the protection of neutral commerce, but in the case of Santiago and Guantanamo, the universal, actual, knowledge of the conditions, existing, dispensed with the necessity of notice, which would have been an empty form.

International Law (Hall), pp. 718–724.

FOURTH.

The "Adula" was guilty of a breach of the blockade of Guantanamo.

The vessel can fairly be pronounced a blockade runner. She had already, deliberately run the blockade of Cienfuegos. Her master appreciated this fact and had anticipated the capture (p. 234).

From the admissions made by her owner and master and members of the captured crew, and the other proofs which we have already reviewed, but one conclusion can be drawn: The owners of the vessel yielded to the temptation offered by large charter money and permitted her to engage in what they knew to be a dangerous trade. In spite of their denials it is clear that they allowed her to sail for Guantanamo, with actual knowledge of its investment and blockade. This rendered her liable to capture and condemnation.

In the case of the *Circassian*, 2 Wall. 135, it was said by Mr. Chief Justice Chase:

> "It is a well established principle of prize law, as administered by the courts both of the United States and Great Britain, that sailing from a neutral port with intent to enter a blockaded port and with knowledge of the existence of the blockade, subjects the vessel, and in most cases its cargo, to capture and condemnation. . . . We are entirely satisfied with this rule. It was established with some hesitation when sailing vessels were the only vehicles of ocean commerce, but now, when steam and electricity have made all nations neighbors, and blockade running from neutral ports seems to have been organized as a business and almost raised to a profession, it is clearly seen to be indispensable to the efficient exer-

cise of belligerent rights. It is not likely to be abandoned until the nations by treaty shall consent to abolish capture of private property on the seas, and with it the whole law and practice of commercial blockade."

Yeaton v. *Fry*, 5 *Cranch* 335.
The Frederick Molke, 1 C. Rob. 72.
The Columbia, 1 C. Rob. 154.
The Neptunus, 2 C. Rob. 94.
1 Kent Com. 150.

In *Duer on Insurance* (*p.* 661) it is stated:

"Proof of the actual knowledge of the party at the inception of the voyage supersedes in all cases the necessity of warning, nor is it of any importance by what means or in what form he received the information; if the communication made to him is credible in its nature, he is not permitted to aver that he placed no confidence in the communication, but had just claims to his belief. . . . And even in the absence of actual notice, since the proof was sufficient to show the notoriety of the fact a blockade existed at the port to which the voyage was commenced, it raises a presumption by which the party charged with the offense may be concluded."

In the case of the *Admiral*, 3 *Wall.* 603, it was said:

"Settled rule as established by a majority of this court is that a vessel which has a full knowledge of the existence of a blockade is liable to capture if she attempts to enter the blockaded port in violation of the blockade regulations, and that it is no defense against an arrest made under such circumstances that the vessel arrested had not been previously warned of the blockade, nor that such previous warning had not been endorsed in her register."

The Biagorry, 2 *Wall.* 135.
The Herald, 3 *Wall.* 768.

The claimant pleaded as a justification, and Solis, the charterer, dramatically asserted, that the humanitarian objects of the voyage purged it of any suspicion of wrong. Such an attempt by a shipper to prescribe an exception to the rules of blockade is an absurdity.

Again; if the owners of the vessel honestly believed that they had a right to pass the blockades in search of refugees, why did they go to the trouble of obtaining a passport for the *Adula* when she went to Cienfuegos upon similar missions on the 9th and 20th of May? What justification had they for persisting in such an opinion when advised by the United States consul that it was erroneous? We submit that this excuse is not even plausible. The purpose of a blockade is not alone to damage the commerce of an enemy, but to prevent the enemy from obtaining supplies, and from receiving or transmitting information. On the proposed voyage, the *Adula* was to call at Guantanamo, then at Santiago, then at Manzanillo, and afterward at such ports as the charterer might designate to the master. It was her intention to take on at each port such passengers as the charterer might produce. The character of these passengers would have been unknown. Coming from Spanish ports they might well have been Spanish officials and Spanish spies, travelling in the guise of Cuban refugees. They could have communicated to Admiral Cervera the strength of the blockading fleet, and could have carried from the invested territory information which, promptly imparted to Spain and Havana, would have proved valuable to the enemy. If such voyages were permitted, the purposes of blockade would be defeated and it would become little more than a farce.

The Tulip, 3 *Wash. C. C.* 181.

The claimant also pleads that the vessel never had any intention of violating the blockade; that the master had been specially warned to take no risk, but to stop at once, if ordered to do so by a blockading vessel, and, if stopped, to endeavor to obtain permission to pass the blockade from the commanding officer, but in no event to persist in entering any port if ordered away. When captured the *Adula* was proceeding directly into a blockaded port and had made no attempt to get permission from the naval authorities. But she had no right to call and ask for such permission and thus test the efficiency of the blockade.

In the *Admiral*, 3 *Wall.* 603, *supra*, it appeared that during the War of the Rebellion, a British vessel with her cargo was captured by a naval vessel of the United States, while standing in to the port of Savannah, then blockaded. She had been chartered in Liverpool by a firm of British subjects, to proceed with a cargo off the port of Savannah, and if, when she arrived, it was found that the blockade had been raised, then to proceed into the port and deliver her cargo, but if the blockade were still in force to proceed to St. Johns, New Brunswick. It was stipulated that double freight should be paid if the cargo were landed at Savannah. The owner enclosed a copy of the charter-party to the master, with a letter of instructions. By these, the master was directed to run no risk of capture, but to call off Savannah, and if he should find the blockade still in force, to have the officer, in command of the blockading ship, make an endorsement in the ship's log, to the effect that she had been warned off. It was held:

> "Arrested as the ship was, when near the blockaded port and when heading for the land, and when, in point of fact, she was in the act of entering the port, the master then, instead of presenting the clearance

for the port which he had passed, set up the pretense that his purpose was to inquire whether the blockade had been raised, and claimed that he must be first notified of a fact, which he knew when the ship sailed, before the capture could lawfully be made. Such a defense is without merit and finds no support in any decided case or in any acknowledged principle applicable to prize adjudications."

In the *Cheshire*, 3 Wall. 231, it was said:

"The intention to break the blockade is to be presumed from the position of the ship when captured. As already stated, she knew of the blockade when she sailed from Liverpool. She had no just reason to suppose it had been discontinued. Her approach, under these circumstances, to the mouth of the blockaded port for inquiry was itself a breach of the blockade and subjected both vessel and cargo to seizure and condemnation . . . (p. 236). If approach for inquiry were permissible, it will be readily seen that the greatest facilities would be afforded to elude the blockade. The liberty of inquiry would be a license to attempt to enter the blockaded port, and that information was sought would be the plea in every case of seizure. With a liberty of this kind the difficulty of enforcing an efficient blockade would be greatly augmented. If information be honestly desired, it must be sought in other quarters. In the case of the *James Cook*, Edw. Adm. 263, the ship was captured at the entrance of the Texel, and the court applied this rule, observing that the approach of the ship to the mouth of the blockaded port, even to make inquiry, was in itself a consummation of the offense, and amounted to an actual breach of the blockade."

We have reviewed with some care the character of the entries made in the *Adula's* log during her voyage from Kingston, and have demonstrated their self-evident

falsity. The errors are so gross that they cannot be passed over as trivial exhibitions of carelessness. No hypothesis consistent with one of the many which might be evolved from the log can be made to agree with the master's description of the *Adula's* course. When coupled with the master's admission that the capture was not unexpected, the false record develops into a very suspicious circumstance. The master's testimony concerning the ship's course is supported by that of the first officer (pp. 127–128) and members of the crew (pp. 92, 121, 131); on the whole it seems more credible than the log. The truth with regard to the voyage is doubtless this: After leaving Kingston the *Adula* rounded Morant Point, then proceeded at her best speed toward Santiago and sighted the fleet on blockade off that port before noon on the 29th. Throughout her voyage she was many miles to the westward of any position shown by her log. She became convinced that the blockade was effective and, without attempting to get permission to pass, hurried coastwise toward Guantanamo. Running along close to the shore she was unable to see the U. S. S. *Marblehead* and *Vixen* lying within Guantanamo Bay until she reached the entrance. This gave her no opportunity to inspect the blockade, and she was caught in the act of attempting to violate it.

The blockade declared by the proclamation of June 27th included the port of Manzanillo. An actual and effective blockade was established immediately. This fact was known in Kingston and the *Adula* had notice of it. She intended to proceed to Manzanillo after calling at Santiago and Guantanamo. This rendered her liable for an intended violation of the blockade of Manzanillo.

The Peterhoff, 5 Wall. 28, 54:

"It is an undoubted and general principle recognized in this court in the case of the *Bermuda* and several other cases that an ulterior destination to a blockaded port will infect a primary voyage to a neutral port with liability for intended violation of the blockade."

The Bermuda, 3 Wall. 551.

FIFTH.

The prize court would not have been justified in ordering further proofs to be taken as prayed by the claimant's motion.

The proofs, *in preparatorio*, were taken in accordance with the long-established rule of prize courts. The ship's papers were all in evidence. Only the master and members of the captured crew were examined, and their examinations were upon standing interrogatories. On these proofs the cause was heard.

In the Pizarro, 2 *Wheat.* 227, it was said by Mr. Justice Story:

"It is upon the ship's papers and the examinations thus taken *in preparatorio* that the cause ought in the first instance to be heard in the District Court, and upon such hearing it is to judge whether the cause be of such doubt as to require further proof, and, if so, whether the claimant has entitled himself to the benefit of introducing it. If the court should deny such order when it ought to be granted, or allow it when it ought to be denied, and the objection be taken by the party and appear upon the record, the appellate court can administer the proper relief."

The Amiable Isabella, 6 *Wheat.* 1, '77:

"It is to be recollected that by the settled rule of

prize courts, the *onus probandi* of a neutral interest rests upon the claimant. This rule is tempered by another, whose liberality will not be denied—that the evidence to acquit or condemn shall, in the first instance, come from the ship's papers, and persons on board; and where these are not satisfactory, if the claimant has not violated good faith, he shall be admitted to maintain his claim by further proof. But if, in the event, after full time and opportunity to adduce proofs, the claim is still left in uncertainty, and the neutrality of the property is not established beyond reasonable doubt, it is the invariable rule of prize courts to reject the claim and to decree condemnation of the property."

The Grey Jacket, 5 *Wall.* 342, 368:

"The order [for further proof] is always made with extreme caution and only where the interest of justice clearly requires it."

In *Story's "Principles and Practice in Prize Courts,"* *pages* 9, 18, *and* 24, it is said:

"There can be no honest reason why the whole truth should not be told by the captured persons on the first examination. . . . Where the case requires the admission of new evidence that may always be obtained, but further proof is in no case a matter of right and rests in the sound discretion of the court. . . . It is never ordered unless cause appears upon the original papers and the answers to standing interrogatories."

Benedict's Admiralty, § 612:

"These (ship's) papers and examinations *in preparatorio*, constitute the only evidence on which the cause is first heard. If on this evidence there be doubt, or justice require it, the court may in its discretion order further proof."

Apply this rule to the present case. Facts which prove her previous violation of the blockade of Cienfuegos, were established by entries in her log, and the depositions of her master and members of her crew. Notice and due warning of the investment and blockade of Santiago and Guantanamo is proven by many papers found on the vessel, by the deposition of Solis, her charterer, Yeates, her master, and Morris, a member of her crew. The claimant's petition, answer, and test affidavits support this proof. That the vessel was within the control of a Spanish subject and sailing under a Spanish license is proven by the charter-party and the deposition of her master and charterer. Her log entries for the days occupied by her voyage to Guantanamo are grossly inconsistent, and indicate a deliberate intention to mislead any one who might examine them. She was caught in the act of entering the port of Guantanamo without a proper permit for that purpose. These facts, none of which could be disproved without discrediting the ship's papers and impeaching the claimant's witnesses, are sufficient to condemn the vessel. Proof of the alleged sentimental features of her proposed voyage and the alleged simple-hearted humanitarianism of Solis could not affect the case. The vessel had no right to persist in entering the blockaded port after she was told that she ought not to do so. There can be no justification for her owners in that they assumed to disregard well-recognized rules of blockade, and prescribed an exception to these rules which suited their convenience.

The further proof offered by the claimant was in substance:

(1.) To prove by Solis that he delivered the *Adula's* passport to Commander McCalla (p. 26). Solis testified *in preparatorio* that he delivered all of his papers to McCalla (p. 107). It would have been improper to permit him to be

re-examined on this subject. The claimant did not offer to call McCalla as a witness. Through an oversight, we assume, the claimant assigns as error the refusal of the court to order the taking of McCalla's deposition (p. 240, XIX). We do not set up a spoliation of papers as a ground for condemnation, but note the disappearance of the passport as a suspicious circumstance. The claimant suggested that a copy of the paper could have been obtained from the Spanish consul who signed the original. This could not have been done because the United States and Spain were at war when the case was heard. Beside, it was not necessary to know the exact contents of the paper. It was an enemy's license authorizing Solis to take the *Adula* to ports of the enemy, and as such was sufficient to condemn the vessel.

(2.) To prove by reports or officials of the Navy Department that the blockade of Cienfuegos had been abandoned, about June 15th, when the *Adula* proceeded thither, without a passport (pp. 26, 27). This could not be proven because it is not a fact. The *Adula* was boarded on her return voyage. Beside, the running of the blockade of Cienfuegos was not a ground of condemnation in this case.

(3.) To prove that the entries in the *Adula's* log were correct or nearly so (p. 27). The claimant did not name any witnesses who would do so. The log is in court and speaks for itself.

(4.) To prove by the master that the *Adula* expected to ask permission to pass the blockade from the United States fleet off Santiago and did not do so, because no vessel bore down upon and stopped her (p. 27). We have seen that this would not be material if it were a fact. On his first examination he dealt with it at length, and beside we have the log and the testimony of several members of the captured crew.

(5.) To prove that Forwood believed that the *Adula's* voyages between the ports of Guantanamo, Santiago, and Manzanillo would be made under the auspices of the United States Navy and with its consent (p. 27). What he may have believed is immaterial. He had positive notice from the United States Consul that the *Adula* would not be permitted to enter these ports. He regarded a Spanish passport as more important than one from the United States.

(6.) To prove that the *Adula* discharged her cargo at Kingston on June 28th because she had no right to carry supplies to Cuba and did not intend to do so (p. 28). If proved this would supplement the evidence which shows that the claimant had knowledge of the blockade before the *Adula* sailed for Guantanamo.

(7.) To prove that Horatio Morris made a mistake when he testified that he had learned of the blockade in Kingston three days before the *Adula* sailed (p. 28). That he did not understand the meaning of the term a blockade. To permit such proof would be a patent violation of the rule with regard to ordering further proof. And

(8.) To prove that Solis was a Cuban sympathizer, and only a Spanish subject because the freedom of Cuba was not an accomplished fact; that he was not a Spanish agent and that Forwood had learned this before the charter-party was signed. That Solis and Walker, formerly master of the vessel, carried letters on the *Adula* for delivery in Cuba as an act of courtesy (pp. 26–29). We have already reviewed the evidence bearing upon the character of Solis. His own testimony and his passports proved his allegiance to Spain. The letters found on the vessel are in evidence and speak for themselves.

It would have been error for the prize court to permit the taking of these proofs. They would have amounted

to nothing but vain repetitions of immaterial matter and attempted denials of facts already set out in the evidence.

We submit that the decree of condemnation should be affirmed.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
Of Counsel for Captors.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

THE STEAMSHIP *Adula*, HER ENGINES, BOILERS, TACKLE, APPAREL, ETC.; THE ATLAS STEAMSHIP COMPANY (limited), Claimant, *Appellant*,

v.

THE UNITED STATES.

No. 167.

BRIEF ON BEHALF OF APPELLEE.

This is a libel in prize against the British steamship *Adula* (Rec. p. 1), filed in the Southern District of Georgia on July 21, 1898. Depositions *in preparatorio* (pp. 88–143) were taken July 21 and 22, and her owner, the Atlas Steamship Company (pp. 6, 8), appeared as claimant. A decree in condemnation (p. 24) was entered July 28, 1898. A motion was made (p. 24) on August 3 for "further relief," which was actually for an order for further proof, and this was argued on affidavits presented by the claimant (pp. 25–40) and depositions *de bene esse* for the libellant (pp. 48, 143–186). This was denied (p. 49), and the vessel was released on stipulation of value (p. 247). The decree gives the ground of condemnation as "an attempt to run the blockade as charged in the libel, as well as enemy property."

In an elaborate opinion (p. 57; 89 Fed. Rep., 351) the facts in the case and the conclusions of the court are stated. The opinion is so full and clear that the labors of counsel on appeal are greatly abbreviated.

Statement of Facts.

The *Adula* was engaged prior to the Spanish-American war in general trade between Kingston and other ports on the coast of Jamaica. It was consequently well fitted for shallow waters. After the war broke out the vessel was chartered by various persons, in the intervals of its regular work, for voyages to Cuba. Twice it went to Cienfuegos with permission from the United States Government, obtained through Consul Dent at Kingston, and a third time to the same port, after the blockade had been declared, without permission. It took one trip to Santiago before the blockade. On June 28, it was chartered by Don José R. Solis, a loyal Spanish subject, to carry refugees from the three cities of Manzanillo, Santiago, and Guantanamo. Señor Solis was enrolled as supercargo. The two latter ports had been blockaded since the early part of June by American war vessels, and by the President's proclamation of June 27 the first-named port was included in the blockaded territory. The *Adula* left Kingston late in the afternoon of June 28. The United States consul had warned the local agent of the owner that the vessel would not be allowed to enter Guantanamo or Santiago and had refused the charterer a permit or safe conduct. The vessel sailed in spite of this, going first toward Santiago and then to Guantanamo, was met before reaching the harbor by the U. S. S. *Vixen*, ordered to proceed, entered the harbor of Guantanamo and was seized by the *Marblehead*, which with other vessels of the fleet was lying inside the bay.

The claimant asserts that the purpose of the vessel was to inquire of the blockading squadron at each port whether permission would be granted to enter to take off refugees. The instructions of the owner to the master (p. 12) are consistent with this purpose.

Upon these conditions of fact it is insisted that con-

demnation should follow. Without now adverting to other reasons which will be hereafter discussed, it is maintained that the following facts require condemnation:

(1) A blockade of Guantanamo existed when the vessel was captured.

(2) The vessel was notified of the blockade prior to sailing from Kingston.

(3) Its approach to the harbor without first having obtained permission, even to ask permission to enter, was in itself a violation of the blockade.

I. The Blockade Existed.

The evidence on this subject is contained in the depositions *in preparatorio*, in the deposition of Lieutenant Anderson, taken on the motion for further proof, and in official documents not contained in the record, but of which the court will take notice.

Guantanamo is 18 miles from the mouth of Guantanamo Bay (p. 17). It was a considerable city before the war, but was reduced by the operations of war to three or four thousand inhabitants (p. 173). Access to it is obtained either by a small river emptying into the upper bay of Guantanamo (see official map) or by rail to Caimanera, a town on the west side of the upper bay (p. 173). The occupation of the harbor was both by the naval vessels and by a landing party of marines (p. 108). The marines occupied the crest of a hill on the west side of the harbor near its entrance and the side of the hill facing the harbor. (Morris, War with Spain, p. 221; Goode, With Sampson Through the War, p. 166.) The American vessels took possession of the lower bay on June 7th, obliging a small Spanish gunboat, The *Sandoval*, to take refuge in the upper bay (App. 488, 497; Goode, 165). At various times expeditions were made to different points on the bay, not in possession of the blockaders,

to shell forts or to raise mines (App. 494, 499, 502; Morris, 224). The vessels remained at the entrance of the harbor (Rec. 149) and a cable station was opened there (p. 497). These facts are fully stated because it is of importance to show just what was the nature of the blockade of the port. It is made clear that there was no occupation of the surrounding country and that the landing of the marines was only an accessory to the naval operations, that is, the blockade of the port and the establishment of a coaling station for coaling of naval vessels.

Purser Williamson (p. 88) testifies to the capture by the *Marblehead* in Guantanamo Bay and that at the time the *Solace* and two or three torpedo boats were there; (p. 91) that Commander McCalla told them that the port was blockaded and that the blockade had been declared the day before their arrival. Captain Yeats (p. 94) testifies to the capture by the *Marblehead* and to the presence of several other ships, including the *Solace*. He says (p. 98) that the first time he knew that Guantanamo was blockaded was when Commander McCalla told him that they had no right there; that "it was apparently under an order of blockade." Supercargo Solis (p. 104) testifies to the capture by the *Marblehead* and the presence of several other ships, including the *Solace*. He says (p. 109) that Captain McCalla told them that the blockade had been declared officially on the 27th.

From this testimony alone it is very clear that the *Adula* found an actual blockade of Guantanamo at her arrival, by the *Marblehead* and other vessels.

Lieutenant Anderson testifies (p. 148) that the *Marblehead* took up her position on June 6 or 8 and that an actual blockade was established from that time; that it was established by order of Admiral Sampson and was exceedingly strict and efficient; that there were at no time less than two and frequently several American war

ships in the harbor; that foreign vessels were turned back from the harbor. The witness himself boarded an English vessel, ordered her in, and, after examination, she was then refused permission to proceed up the bay and sent away.

It appears from the official document published by the Navy Department entitled "Appendix to the Report of Chief of the Bureau of Navigation, 1898," that as early as May 29, the question of occupying Guantanamo was considered by the Admiral (p. 478); that the *Marblehead* and the *Yankee* were sent to Guantanamo (p. 488) on June 7, entered the harbor and took possession of the lower bay to hold it for the use of American vessels; on the 10th (p. 489) the *Panther* and *Yosemite* were sent there; on the 12th (p. 491) the torpedo boat *Porter* arrived from Guantanamo bringing the report of a land battle there; on the 13th the collier *Scindia* arrived from there; that further skirmishing continued there on the 13th and 14th (p. 492), and that on the 14th (p. 493) the *Texas* and *Suwanee* were sent to destroy the forts in the upper part of the bay, which was accomplished (p. 494) on the 15th. A cable office was opened at Guantanamo Bay on the 21st (p. 497) and dispatches (p. 499) were received through this office on following dates.

The actual existence of the blockade from the 7th of June is completely established from this evidence.

No other fact is necessary to create a legal blockade. Halleck, Int. Law, ch. 25, § 9, says:

"Blockades are divided by English and American publicists, into two kinds—(1) a simple or *de facto* blockade, and (2) a public or governmental blockade. This is by no means a mere nominal distinction. * * * A simple or *de facto* blockade is constituted merely by the fact of an investment, and without any necessity of a public notification. As it arises solely from facts, it ceases

when they terminate. Its existence must, therefore, in all cases, be established by clear and decisive evidence."

Phillimore, Int. Law, vol. 2, p. 293 (Am. ed.) says:

"The proper notification (of a blockade) may be conveyed either by:

"(1) The simple fact itself, that is, by the presence of the blockading force, accompanied by the declaration of an officer of the fleet, for public notifications between the governments are only meant for the information of individuals, and if the individual be personally informed, that purpose is still better obtained than by a public declaration."

Sir William Scott says (*The Mercurius*, 1 C. Rob. 82):

"The inability of the master to proceed into the Texel, therefore, proves the blockade; for a blockade may exist without a public declaration, although a declaration unsupported by fact will not be sufficient to establish it."

A laborious effort is made in the learned brief for the appellants (pp. 11–17) to show that Guantanamo Bay was not blockaded, but that the territory was in the possession of the United States and no longer enemy territory. The facts established, which are carefully avoided by the brief of the appellants and accurately stated in this brief, show that a blockade in fact existed, although with this was coupled the use of the harbor of Guantanamo. This blockade fully met the fixed definition of a legal blockade. Sir William Scott has several times defined a blockade. In The *Rollo* (6 C. Rob. 372) he says:

"What is a blockade but a uniform exclusion of all vessels not privileged by law?"

In *The Frederick Molke* (1 C. Rob. 87) he says:

"What is the object of a blockade? Not merely to

prevent an importation of supplies, but to prevent export as well as import, and to cut off all communication of commerce with the blockaded port."

In *The Vrouw Judith* (1 C. Rob. 151) he says:

"A blockade is a sort of circumvallation round a place, by which all foreign connection and correspondence is, so far as human force can effect it, to be entirely cut off."

Phillimore (Int. L. vol. 3, p. 383) says:

"The object of a blockade is to prevent exports as well as imports and to cut off all communication of commerce with the blockaded place."

H. B. Deane (Law of Blockade, p. 2) defines a blockade as follows:

"The placing such a force on or near the seaboard of a town or line of coast, as will effectively prevent vessels from passing between the sea and that town or coast."

Wheaton (2d ed. by Lawrence) approves:

"The definition of a lawful maritime blockade, requiring the actual presence of a maritime force, stationed at the entrance of the port, sufficiently near to prevent communication."

In what respect then can it be said that the conditions at this port do not constitute a blockade? While it is true that a blockade is usually accomplished from the outside, yet in this case, as in the blockade of the Mississippi River in the Civil War, the blockading force was able to enter inside the entrance and to enforce the blockade from within and not from without.

It abundantly appears from the evidence cited that in the immediate vicinity of the entrance to this harbor there were few human habitations, and the Spanish forces, as well as the inhabitants, were at a distance of from twelve

to eighteen miles. Communication with them would have been had by passing through the blockade and entering points on the shore of the bay or on the river leading to the city of Guantanamo, beyond the points occupied by the American forces.

The case of *The Circassian* (2 Wall. 135) precludes further discussion on this subject, since the present case does not go so far as the doctrine declared in that. The facts of that case are stated in appellant's brief (p. 14). It was held by this court that a vessel bound for New Orleans was subject to capture, after New Orleans was in possession of the United States authorities, on the ground that the blockade had not ceased with the Federal occupation. The court there said (p. 150):

"Only the city was occupied, not the port, much less the district of country commercially dependent upon it, and blockaded by its blockade. Even the city had been occupied only three days. It was yet hostile; the rebel army was in the neighborhood; the occupation, limited and recent, was subject to all the vicissitudes of war. Such an occupation could not at once, of itself, supersede or suspend the blockade. It might ripen into a possession which would have that effect, and it did; but at the time of the capture it operated only in aid and completion of the naval investment."

In that case the vessel was bound for New Orleans, the very city in possession of the United States when the vessel was captured. But here the purpose of the *Adula* was to reach the city of Guantanamo, or the nearest available point to it in the bay, a place in the undisturbed possession of the enemy, to be reached only by passing the blockade established to prevent just such intercourse. Here, too, as will be fully seen, the vessel had notice of the continued existence of the blockade and warning was distinctly given against going.

II. The Claimant Was Notified of the Blockade.

The evidence of notice to the owner of the vessel of the actual existence of a blockade is contained in the admissions of Don Jose R. Solis, the charterer and supercargo of the vessel, of W. Peploe Forwood, agent of the owner in Kingston, and of Captain Yeats.

Señor Solis (p. 106) thus described his interview with Consul Dent at Kingston :

"I explained to Mr. Dent the idea of my voyage. He told me he was sorry he could not give me the passport I wanted, because he was not allowed to give such passports unless he had permission from the American authorities in Washington. As I was going to leave two hours afterwards, he said there was no time to ask permission. I said, 'Look here, Mr. Dent, I don't think there is anything wrong, because my intention is to go to Guantanamo and ask permission of the American admiral to allow me to go. If he does not allow me, I come back.' Then I went to see Mr. Forwood, the agent of the Atlas Steamship Company. I explained what Mr. Dent had told me. He said, 'Look here, Solis, I don't think there will be anything wrong, because, besides what you say, I will give the captain a letter with full instructions about what he will do, and this letter you may show to the United States naval officers, and, of course, they will see you go with the purpose of taking passengers and with no other purpose.' When I chartered her she had a part of her cargo on board, and Mr. Forwood ordered that portion of the cargo taken off. During her last voyage she sailed direct to Guantanamo and to no other place; we went right to Guantanamo; she went by no other port; we went in sight of no other port."

He further testifies (p. 108):

"I knew that there was a condition of war existing between America and Spain on the 21st. They told me on

board the *Adula* that the blockade of Guantanamo was published on the 27th, the day before. I had not heard it before I left Kingston. I did not know officially Guantanamo was blockaded. On board the *Adula* I heard that on the 27th there was issued an order from the President of the United States declaring a blockade of the port of Guantanamo, but I did not know it until we arrived at Guantanamo. At Kingston I heard there were some warships at Guantanamo, and I told Captain Forwood that the first thing I would do would be to go to the admiral and tell him my intentions. I did not think the papers in Kingston published the blockade, I did not see it if they did. The people generally did not talk about it. I read something about 'McCalla's Camp.' I understood Guantanamo was not blockaded by the United States. I heard that marines had been landed at the entrance to Guantanamo, Caymenera—the bay is called Caymenera—and that the marines had possession of the port, and that the ships were inside. I can not tell when I received the information that marines had been landed there and taken possession of the port of Guantanamo or Caymenera. Perhaps it was one or two days before. I don't know what the others knew about a state of war existing. I understood Guantanamo was not declared officially blockaded, although there were some vessels there. I got that information from newspapers in Kingston, and from those newspapers I got the information that marines had been landed at the entrance to the bay on the east side; they call it 'East Point.' I don't know when I got the information, but think it was the day before the vessel left Kingston. I was at Kingston when I obtained that information; it was Monday, and I left on Tuesday."

Just what he means by his understanding that Guantanamo was not blockaded while admitting his knowledge that ships were inside and that marines had been landed, is not easily understood. It is incredible that he supposed that free intercourse was to be permitted, through the fleet, to the port above.

He gives further (p. 109) interesting details of the conversation between him and Consul Dent, as follows:

"At Kingston the American consul told me, when I asked permission to go to Guantanamo, Santiago, and Manzanillo, that he could not give me such permission; that only the authorities in Washington could give such permission. As I was going to leave that same day, and he said, 'I don't think they will give you permission.' I said, 'Look here, Mr. Dent, as long as I don't go into anything bad; I have seen some telegrams from people there asking for vessels to bring their families, and I think I could go and get the parties; I don't intend to run the blockade or anything of that kind; I don't intend to get a cargo; if you don't give me permission, I think the admiral, after I get to his presence, he will not refuse me to go in, and if he refuses I will come back; I won't attempt to do anything against the American authorities.' I was not aware of the blockade of Santiago. I knew there were vessels there. I knew Manzanillo was not blockaded; I am not sure of Santiago, but I am sure about Guantanamo and Manzanillo, and even being blockaded I thought that he or the admiral would give me permission to go there and get refugees, because I did not see there was anything wrong to the United States in bringing refugees that wanted to get away from the path of the war. On the contrary, I thought it was a good thing to take people from the centre of the war. Even as I was doing it upon business principles at the same time there was a kind of humanity in it. I don't mean to say I did it only from humanity; it was business. I also wanted to bring my family from Manzanillo. Captain McCalla thought I was a spy. Nobody can prove anything on me."

A further statement on the same subject brings out more clearly still the position of Consul Dent (p. 114):

"Mr. Dent told me not to go. I don't remember his giving any particular reason for not going. I told him those voyages had been made at other times, and that it not being my intention to take a cargo, but my only idea

was to bring refugees. I showed him the paper published the day before, in which they stated the Spanish consul would not give permission, and that it was not nice, etc. Mr. Dent did not give me any reason why I could not go there. He told me not to go, and I answered to him that I was not going for anything wrong. He said to me he could not give me permission. Then I said to him, I decided to go, and I don't think there will be any harm for me, since I didn't go for any bad thing, but only to bring refugees. I did not think I did any harm to the United States in that. I don't remember Mr. Dent telling me the vessel would be liable to capture. He said I ought not to go, and that he could not give me such permission.

* * * * * *

"Under ordinary circumstances it would not be necessary for me to get permission from Mr. Dent, because Captain Forwood told me he never thought it necessary to get permission of the consul, since it was not a business matter, such as bringing a cargo or wrong things. I went to the consul, introduced by a Cuban gentleman called Miranda, that I think is employed there or receives favors from the consul. That gentleman made an appointment with me for 2 o'clock in the consul's office. When I went to the consul's office I was nearly satisfied of obtaining that permission, because I thought this gentleman, Mr. Dent, had given permission at different times of the same kind. If I had known he was not going to give me such permission I should not have lost my time in going, and since Captain Forwood, of the Atlas line, told me he didn't consider there was any danger in going for refugees."

The clear meaning from all this is that the charterer knew of the blockade, that the local representative of the United States told him not to go, but that he had already made up his mind to take his chances in any event.

The only depositions taken were of persons on the *Adula* and the *Marblehead*, but one statement by Señor Solis is an interesting proof of the effect upon Consul Dent's mind of the interview with him (p. 112):

"I was told that the captain of the *Marblehead* already knew we were going into Guantanamo, because Consul Dent had sent telegrams from Kingston."

Not only was notice thus given to the charterer and supercargo that the vessel was not to go, but Consul Dent took pains to call on Agent Forwood and advise him against the vessel's attempting the trip. Mr. Forwood's whole statement on this subject adduced *ex parte* as a reason for opening the decree and allowing further proof is as follows (p. 34):

"As I was leaving my office at 20 minutes to 5, and a few minutes (say ten) before the ship sailed (she ought, however, to have sailed at 4 o'clock) Mr. Dent came into my office, and I must now give you in detail what occurred and the conversation that took place. You must excuse my giving you this detailed statement and the unofficial language which it will contain, but I give it to you as it occurred, without reference to officialism. I said, 'Hello, Dent; what can I do for you?' Then he casually remarked, 'Oh, nothing'; then I said, 'I was just going home; come in and have a whiskey and soda.' He came into my private room, and we sat on the table together. As we were having our drink he asked me if the *Adula* had sailed, and I said, 'No; she was going in five minutes or was just going off.' He replied, 'Well, Forwood, I would not advise you to let the ship go; they won't let her into Guantanamo, and they will be watching for her.' I said to him, 'Oh, Dent, let me show you the captain's instructions. He has got orders to go to the fleet there and ask their permission to take some refugees.' 'Well,' he said, 'I don't know, but they will be watching for her, and I think that Señor Solis is a Spanish agent carrying $300,000 in gold to buy over the rebels in the American camp.' I told him that I had enquired about the man, and that it was one of the usual Kingston yarns. He simply shrugged his shoulders, talked about some other matters for a minute or two, we finished our drink, and he left the office."

The log of the *Adula* (p. 198) shows the hour of sailing to have been 6 P. M.

The informality of this notice in no degree detracts from its effect. Consul Dent, after his conversation with Señor Solis, doubtless felt any further warnings supererogatory. It may well be supposed that Señor Solis conveyed his view, already quoted (p. 114), that he should not have lost his time in going had he known that permission would be refused, as well as the statement of Captain Forwood that "he didn't consider there was any danger in going for refugees." Under these conditions Consul Dent had done all that could be demanded of him. But his friendliness toward Agent Forwood caused him to add, in a manner that could not be considered offensive, but was none the less official, warning detailed in Mr. Forwood's testimony.

Captain Yeats' testimony presents the same difficulty as that of Señor Solis. He knew all about the actual existence of the blockade at Guantanamo by American war vessels being in possession of the entrance to the harbor. He could not suppose that trade was then free to the port through the hostile vessels. In spite of all this he denies knowledge that there was a blockade "in the strict sense of the word,"—a marked evasion. His testimony on this subject is as follows (p. 98):

"As to a blockade, in the strict sense of the word; as to a blockade of Guantanamo Bay, I didn't know anything at all about it. I had seen in the papers about Cienfuegos being blockaded, I never knew anything at all about it. I knew some weeks before that Cienfuegos was blockaded, and I knew that by having gone there on previous occasions. I didn't know whether the owner knew that Santiago and Guantanamo Bay were blockaded or not; he simply told me that I should meet warships off there. The first time I knew that Guantanamo was blockaded

was when Commander McCalla told me that we had no right there."

It is, however, unnecessary to take time in discussing whether Agent Forwood and Captain Yeats knew about the blockade because the letter of instructions from Forwood to Yeats (p. 12), annexed as "Exhibit B" to the petition of the claimant, distinctly announces that American warships will no doubt be found off the port of Guantanamo.

One of the sailors on the *Adula*, Horatio Morris, testifies to the common report prior to sailing about the blockade of Guantanamo (p. 118):

"About three days before I left Kingston I heard that Guantanamo was blockaded; I heard it from the people around the streets; I didn't see it; I heard it was in the papers; I never heard any of the officers of the *Adula* or people on board talking about Guantanamo being blockaded, and I don't know exactly whether the owner or master or officers of the ship *Adula* knew that Guantanamo was blockaded. I knew about it, but I don't know anything about them. I don't know how I found it out, but I heard it on the streets of Kingston."

He says further on this subject (p. 121):

"At the time the *Adula* was captured she was sailing for the blockaded port of Guantanamo; she was not at that time going to Santiago. I heard about these ports of Santiago, Cienfuegos and Guantanamo being blockaded a long time before we went there. Each trip we made to the ports in Cuba, I heard about their being blockaded before we left Kingston."

He testifies very positively to an admission by Captain Yeats of knowledge of the blockade of Guantanamo, in spite of his later efforts to obscure this fact, giving the

following conversation between an officer of the *Vixen* and the Captain of the *Adula* (p. 119):

"The crew of the *Adula* made out, about a mile and a-half before we reached Guantanamo, a small cruiser, and the *Adula* stopped, and the cruiser ran up across the bow, and the captain of the cruiser asked us, 'Didn't you sight the warships down to Santiago?' and the captain said, 'Yes,' and the captain stopped, and he said, 'Didn't you hear that Guantanamo was blockaded?' and our captain said 'Yes'; then he said, 'You can proceed on.' I heard about the blockade in Kingston, but after leaving Kingston, until we met this cruiser, I never heard about it any more. I know nothing about any writings or indorsements on the ship's register."

Lieutenant Anderson very positively testifies to admissions by Señor Solis and Captain Yeats. His testimony, beginning with the question by counsel for the claimant, is as follows (p. 152):

"Now, come right down to that point; what was it he said to you about the conversation between Solis and Dent?

"A. Mr. Solis told me that as the *Adula* had previously made two trips into Cienfuegos through the blockade without permission of the consul at Kingston or without authority that he might do the same, or words to that effect.

"Q. What was it he said to you—that Mr. Dent told him—about going to Santiago, Guantanamo, and Manzanillo?

"A. He told me that the American consul at Kingston had refused him permission to enter those ports. That is all he told me about that.

"Q. At what time did he say the American consul had refused him that permission?

"A. Just before sailing, I understood him to say."

He says further (p. 154):

"Q. Did Captain Yeats make any statement to you in reference to any notice from the consul at Kingston, Jamaica—the American consul—prohibiting the ship from going to Santiago, Guantanamo, and Manzanillo?

"A. Yes; he told me in a conversation with him that the American consul had refused permission for the vessel to enter those ports on the voyage she was making."

In view of all these facts we do not think that it is possible for any serious contention to be made that either the owner's agent, the charterer and supercargo, or the vessel's captain were ignorant before leaving Kingston of the existence of the blockade.

Halleck, Int. Law, ch. 25, § 22, states the law recognized by all the authorities:

"Proof of the actual knowledge of the party at the inception of the voyage supersedes, in all cases, the necessity of a warning, nor is it of any importance by what means or in what form, he received the information, if the information was credible in its nature, and came in such a form and from such a source as to leave no reasonable doubt on his mind as to its authenticity."

III. The Approach to the Harbor was a Violation of the Blockade.

On this state of facts no discretion is left in the court as to the adjudication of the vessel as prize. The authorities sustaining this position beyond question are cited in the opinion below (p. 65).

In the case of *The Cheshire* (3 Wall., 231) the captain had instructions substantially like those given in this case "to call off Savannah merely for the purpose of inquiry, but on no account whatever to attempt to enter a blockaded port."

The master of the vessel testified (p. 232):

"I was to speak the blockading squadron, and if the

ports were blockaded, I was to go to Nassau or Halifax."

The court disposed of the contention that under these circumstances the vessel was not guilty of a breach of blockade in the following terms (p. 235):

"Aside from these considerations the intention to break the blockade is to be presumed from the position of the ship when captured. As already stated, she knew of the blockade when she sailed from Liverpool; she had no just reason to suppose it had been discontinued; her approach, under these circumstances, to the mouth of the blockaded port for inquiry was itself a breach of the blockade, and subjected both vessel and cargo to seizure and condemnation. The rule on this point is well settled, and is founded in obvious reasons of policy. If approach for inquiry were permissible it will be readily seen that the greatest facilities would be afforded to elude the blockade; the liberty of inquiry would be a license to attempt to enter the blockaded port; and that information was sought would be the plea in every case of seizure. With a liberty of this kind the difficulty of enforcing an efficient blockade would be greatly augmented. If information be honestly desired, it must be sought from other quarters. In the case of the *James Cooke*, Edwards, 263, the ship was captured at the entrance of the Texel, and the court applied this rule, observing that the approach of the ship to the mouth of a blockaded port, even to make inquiry, was, *in itself*, a consummation of the offence, and amounted to an actual breach of the blockade."

In the case of *The Delta* (7 Fed. Cases, 444) cited in the opinion below (p. 65), the law on this subject is very clearly laid down in the opinion by District Judge Betts, as approved later by this court in the case just quoted and a very forcible exposition of the law by Sir William Scott was there cited (p. 448):

"It is well established by repeated decisions of Sir William Scott, the great master of British prize law, that

a neutral trader can not, with knowledge of a blockade, lawfully go to the station of a blockading force under the pretence of obtaining information as to its continuance. The inquiry must be made elsewhere, not there. 'The merchant,' says the learned judge, 'is not to send his vessel to the mouth of the river, and say, 'if you don't meet a blockading force, enter; if you do, ask a warning and proceed elsewhere.' Who does not at once perceive the frauds to which such a rule would be introductory? The true rule is, that after knowledge of the existing blockade, you are not to go to the very station of the blockade upon pretence of inquiry.' The *Spes* and The *Irene*, 5 C. Rob. Adm. 76; The *Betsey*, 1 C. Rob. Adm. 334; The *Neptunus*, 2 C. Rob. Adm. 110; The *Little William*, 1 Act. 141, 161. The reason and necessity of the rule, as laid down by Sir William Scott, is too obvious to require argument in its support. Were it once relaxed, so as to allow the approach of neutral traders to the mouth of a blockaded port for the purpose of inquiry, the blockade of the ports of the insurgent States could not be made effective by the combined naval forces of all nations. Such a relaxation would operate as a universal license to the merchant vessels of the world to attempt to enter a blockaded port, for a failure to do so would be attended with no hazard. The soundness of this principle has not been called in question by any decision of the courts of this country, and its wisdom will probably be approved so long as a belligerent blockade is recognized in international law as a legitimate and efficient method of prosecuting a public war."

Halleck, Int. Law, ch. 25, § 26, cites with approval a passage from Duer on Insurance, directly applicable to this case:

"'It seems a just inference from the decisions,' says Duer (On Insurance, Vol. 1, pp. 699, 670) 'that where the blockade has been constituted simply by the fact of an investment, although its existence was known at the port of departure, previous to the sailing of the neutral ship, she may clear out, provisionally, for the blockaded

port; but that, in this, as in former cases, the enquiry upon the result of which the right to complete the voyage must depend must be made at a port of the blockading States, or of a neutral power. I see no reason to doubt that the prohibition to proceed to the mouth of the blockaded port embraces all cases of a previous knowledge, from whatever source the knowledge may have been derived, and that in all its violation is subject to the same penalty.'"

In view of the loyal Spanish citizenship of the supercargo and of the *Adula's* past history in breaking the known and declared blockade at Cienfuegos on her third trip, and the leniency with which she was treated at that time (p. 102), can it be doubted that, had no war vessels been found off Guantanamo at the particular moment when she arrived there, the vessel would have entered the bay and sailed up to the city of Guantanamo, taking her chances on escaping in equal security. This very case presents a striking instance of "the reason and necessity of the rule as laid down by Sir William Scott." The learned judge below says (p. 65):

"Nor does the excuse that it was the purpose of Don José R. Solis to approach the American fleet and ask permission of the admiral to take off refugees avail the ship. Indeed, it may well be doubted from the evidence if he had any such purpose. It is plain that when he saw the fleet off Santiago he did not approach it, but steamed away to Guantanamo, where at that time no blockading vessels were visible."

Captain Yeats attempts to make some excuse that his directing his course originally towards Santiago was on account of his knowing the coast in that vicinity and not knowing it near Guantanamo (pp. 96, 100, 101). We can not think that this explanation of his reasons for being out of his direct course to Guantanamo is sufficiently

explained by his own testimony in view of the want of frankness which he has shown in relation to the blockade.

Purser Williamson says (p. 92) that her course was altered perceptibly about 2 o'clock of the day she was captured. Seaman Morris testifies (p. 120) that when they were about four or five miles off Santiago harbor they headed straight on up the coast. Acting Chief Officer Clarkson (p. 127) testifies to having steered a direct course to Guantanamo but that they found themselves somewhat to the eastward of Santiago. Probably the acting chief officer was not in the confidence of his captain as to the course steered. Thereupon they steered directly for the land and, seeing American men-of-war off the entrance, put about and went directly to Guantanamo. Quartermaster Hamilton (p. 142) says that they came up past Santiago and saw the ships.

The conclusion of the district judge that the presence of the vessels off Santiago was the cause of the change of course is perfectly warranted. Had no vessels been found there, it is clearly to be concluded that the *Aduda* would have sailed directly into Santiago Bay.

Other Considerations.

We do not think it necessary, in view of the full discussion of the various details of the case in the very elaborate opinion below, to do more than advert to the other suspicious circumstances relating to the voyage. The large number of letters found on board (pp. 81, 220–227), the suppression of the passport from the Spanish Consul to Señor Solis (see opinion, p. 59), the unnecessarily large load of coal on board the vessel (pp. 154, 155), the difference between Captain Yeats (p. 97) and Señor Solis (p. 112) as to the duty of the captain to go to

other ports beside those named in the charter-party, all combine to throw suspicion on the action of the vessel, which is rendered conclusive by the deposition of the parties themselves.

The opinion of the learned judge below cites the doctrine (p. 60) which must control the decision of this case:

"The authorities on this subject are as abundant as conclusive. That great admiralty judge, Sir William Scott, afterwards Lord Stowell, in *Ranger*, 6 Rob. 126, declared: 'If the owner will place his property under the absolute management and control of persons who are capable of lending it in this manner to be made an instrument of fraud in the hands of the enemy, he must sustain the consequences of such misconduct on the part of his agent.'"

It is respectfully insisted that the duty of the court is entirely clear. The vessel, herself of suspicious antecedents, in command of an alien enemy, with full knowledge of the owner's agent and the vessel's captain, warned by the American consul, attempted to commit an act which the law of nations declares to be a breach of blockade. For doing this the law decrees her forfeiture. A large risk was undertaken in the hope that, by good fortune, a great pecuniary reward would be reaped. The indulgence of the United States authorities so constantly shown to the citizens of Great Britain throughout this war was overstrained in this case and the vessel was submitted to the determination of a prize court. Due regard for the law as settled in the past relieves this court of difficulty in its conclusion.

Reply to Appellant's "Points."

Since the preparation of the foregoing argument the brief of counsel for the appellant has been received and

some notice is necessary of the positions there taken. These will be referred to severally.

1. (Appellant's brief, p. 11.) It is maintained that there was no blockade at Guantanamo Bay, since the port was in possession of the United States. We have already pointed out (*ante*, p. 3) that the occupation was merely of the lower entrance to the bay, effecting a blockade of the neighboring towns and country remaining in the hands of the enemy, and that the purpose of the *Adula* was to pass through the blockade and enter into relation with the enemy above.

The objection that no official blockade was declared of this port is anticipated in our exposition of authorities showing that a blockade may be created by the actual fact, the difference between such a blockade and one publicly proclaimed being that in the former case there must be notice to the vessel to render it liable to capture for violation.

This blockade was created on the 7th of June by the actual presence of the vessels of the United States and it was in existence at the time of the President's proclamation declaring the blockade of the coast of southern Cuba west of Cape Cruz. It was unnecessary for him to declare a blockade of southern Cuba east of Cape Cruz, because the only two ports on that coast, Santiago and Guantanamo were already actually blockaded.

2. (Appellant's brief, p. 17.) The second position, if we understand the appellant's brief correctly, is that the Island of Cuba, under the joint resolution of April 20, 1898, (30 Stat. L. 738) was not enemy territory, and that intercourse with the inhabitants was consequently a friendly and not a hostile act. International law recognizes no blockade of a friendly or neutral territory. If the appellant's position be correct, then the entire blockade of Cuba, under the two proclamations of blockade by

the President, of April 22 and June 27, 1898 (30 Stat. L. 1769, 1776) was void, since it was not enemy territory. It need not be argued that this court will not declare the executive in error in a matter which so peculiarly falls within the political jurisdiction of the Government. The cases cited in support of this position (pp. 19, 20, of appellant's brief) all show that Courts of Admiralty will consider the actual condition recognized by the executive, as determining the status of foreign territory. This portion of Cuba actually in possession of our enemies was necessarily treated as enemy territory, and the President had the right to declare a blockade and prohibit intercourse with it.

3. (Appellant's brief, p. 21.) Stress is laid upon the fact that this vessel was on an errand of necessity and humanity and consequently must be protected. But it is frankly owned (Rec. p. 110) that it was purely a business speculation. It must be governed as other like enterprises. The application for exemption from the ordinary rules of blockade on account of the character of the voyage should have been allowed by the executive, if exemption is to be recognized in this court. We have seen that such an application was made and was denied.

4. (Appellant's brief, p. 23.) An implied license to go into Guantanamo is alleged because the vessel was once allowed to go into Cienfuegos after it had been blockaded. There can be no implication of license in the face of its actual refusal.

5. (Appellant's brief, p. 24.) It is maintained that the cases cited against the appellant are of no effect because they were decided prior to the adherence by the President's proclamation of April 26, 1898, (30 Stat. L. 1770) to the provisions of the Declaration of Paris that blockades to be binding must be effective. If there were any force in this contention, it would be completely overcome

by the facts that the hostile supercargo and charterer of this vessel made inquiry, the day before his capture, of the proper local United States officer and was then told by him of the existence of the blockade and of his liability to capture, and that an effective blockade was actually maintained according to the warning. No authority can be found to warrant, under these circumstances, the course adopted by this vessel.

6. (Appellant's brief, p. 31.) It is unnecessary to go farther than the facts clearly proved in the record in this case to demonstrate an intention to break the blockade. This court has very clearly declared that an approach to a blockade, with knowledge of its existence, for the purpose of asking permission to pass, is itself a breach of the blockade. The necessity of this doctrine is well illustrated in this case. A direct warning against approaching the blockade had been given by a proper officer to this charterer and supercargo, as well as to the vessel's captain and agent; the supercargo himself has asserted his own hostile citizenship and sympathies; and the financial outcome of getting through the blockade would have been most lucrative. The suspicion of a purpose to enter, if the blockading vessels had been temporarily absent is not dispelled.

7 and 8. (Appellant's brief, pp. 34, 36.) The position of the United States Consul, and that of the supercargo, are so fully discussed in the preceding portion of this argument, that no further answer is necessary to the assertions of appellant's brief.

9. (Appellant's brief, p. 43.) As to the suggestion that an opportunity should be given to take further proof, it is only necessary to refer to the previous analysis of this testimony as showing that the facts testified to by the captain and supercargo of the vessel, and offered to be established by the local agent of the vessel, with those shown by offi-

cial record, are the facts upon which condemnation was based. No amount of further proof can change the showing already made by this evidence. This court has said on this subject (*The Grey Jacket*, 5 Wall. 368):

"The order is always made with extreme caution, and only where the ends of justice clearly require it."

No good end can be served by protracting the discussion of this case when the facts are all clearly apparent.

10, 11 and 12. (Appellant's brief, 45, 48, 52.) The brief takes considerable space (pp. 45–54) in discussing the previous history and conduct of the vessel. No amount of discussion can destroy the fact of the evident desire of the owners of this vessel to engage in enterprises just as close as possible to the line of illegality, or the manifest impropriety of their placing a vessel, under such conditions, under the control of a subject of one of the belligerent nations. When an individual, inspired by a desire for gain, follows a course of conduct designed to approach as near as possible to a breach of positive law without coming directly within its penalties, it is no cause for deep regret if his avarice is so overstretched that he brings himself within the toils of the law. It is not ordinarily thought that his fate demands the greater commiseration when he tries to secure immunity from deserved punishment by a plea of his devotion to suffering humanity.

GEORGE A. KING,
WILLIAM B. KING,
Of Counsel for Appellees,
on behalf of certain captors.
WILLIAM E. HARVEY,
Of Counsel for Captors
on the "Resolute."

No. 167.
Supreme Court of the United States.
Supp. Brief of McCammon & Hayden for Captors.
Filed Nov. 6, 1899.

FILED
NOV 6 1899
JAMES H. McKENNEY,
Clerk.

OCTOBER TERM, 1899.

THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, TACKLE, APPAREL, &c., THE ATLAS STEAMSHIP COMPANY (LIMITED), CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

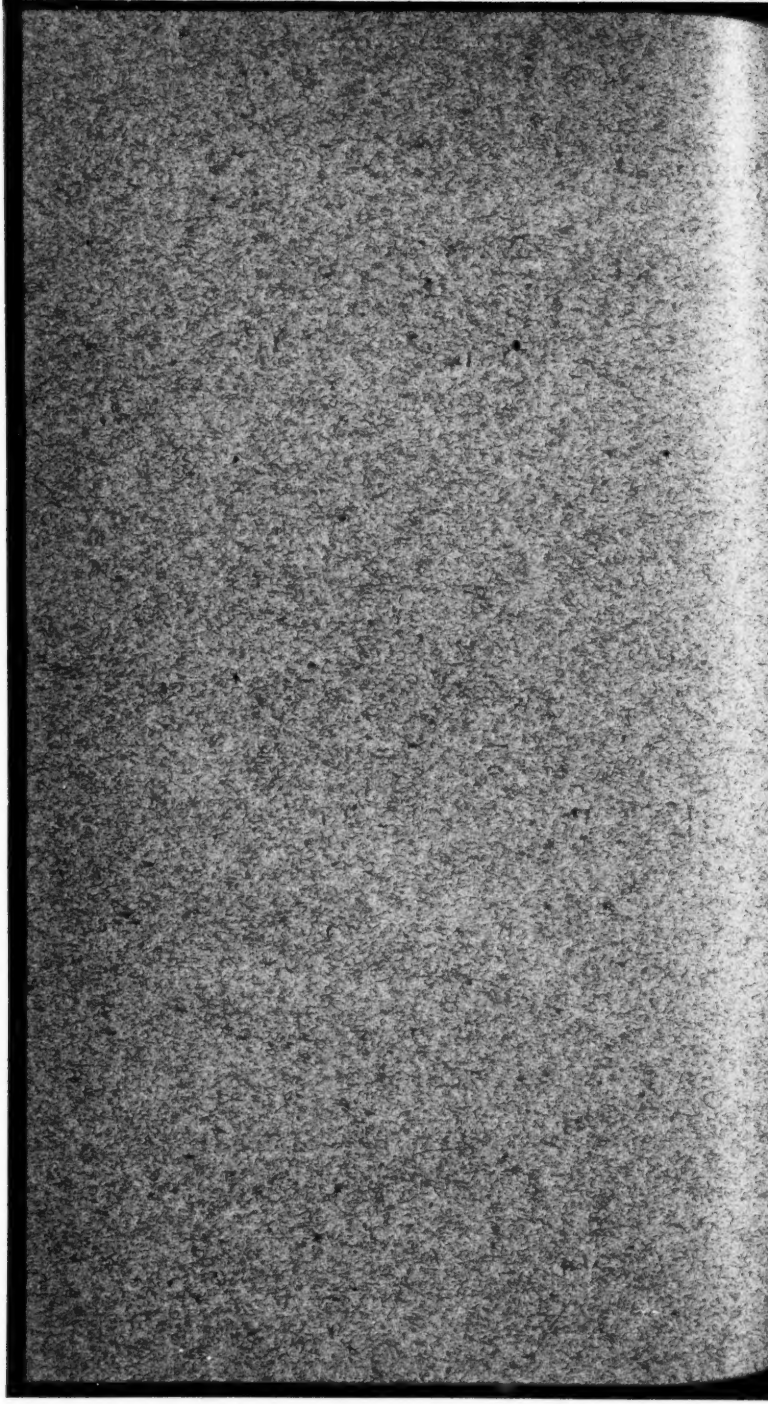
No. 167.

Appeal from the District Court of the United States for the Southern District of Georgia.

SUPPLEMENTAL BRIEF FOR THE CAPTORS.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
Of Counsel for Captors.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1899.



Supreme Court of the United States.

OCTOBER TERM, 1899.

THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, TACKLE, APPAREL, &c., THE ATLAS STEAMSHIP COMPANY (LIMITED), CLAIMANT, APPELLANT, *v.* THE UNITED STATES.	*No.* 167.

SUPPLEMENTAL BRIEF FOR THE CAPTORS.

Since the filing of our briefs in this case we have had more ample opportunity to review the claimant's brief, and consider it desirable to make specific reply to three of the arguments presented.

I.

The appellant contends that no spoliation of the ship's papers can be inferred from the fact, that the passport issued to Solis by the Spanish Consul at Kingston, whereby the latter attempted to authorize the former to take the *Adula* into any Spanish port, was not among the papers

delivered by the prize master to the prize commissioners. It is said (Appellant's Brief, pp. 52–53):

> "Lieut. Anderson's affidavit on this subject is at pages 81 and 82. He annexes a list of 151 documents. The affidavit, however (page 82), admits one error in the list, and contains the statement that, 'if at any time hereafter . . . any further or other papers relative to the said captured property shall be found or discovered to the knowledge of the deponent, they be delivered up.' This would seem to contain a distinct admission that it was possible that another mistake might have been made by some of the United States officers. To admit this is to admit simply that they were human. It cannot be seriously claimed that the mere fact that no such paper was returned by Lieut. Anderson can outweigh the positive testimony of six witnesses that no spoliation of papers occurred."

It will be remembered that on examination *in preparatorio* Solis testified that he had procured such a passport from the Spanish consul and had it with him on board the *Adula*, and that Forwood, the managing owner of the vessel, would not sign the charter-party until the passport had been obtained (p.).

We have contended that the disappearance of the passport was a most suspicious circumstance. It was an enemy license procured for the voyage on which the *Adula* was engaged. Solis or any one else was bound to recognize its incriminating nature.

The prize rules with regard to the taking, preservation and return of all papers found upon a captured vessel are these:

Benedict's Admiralty, pp. 453 *and* 454, *Rules* 8, 9, *and* 10.

8.

The captor shall deliver to the judge at the time of such notice (from the captors to the judge of the prize court), or to the Commissioner or Commissioners, when he or they shall, conformably to the foregoing rule, report the place where such captured property is, or at such other time as said Commissioners or either of them shall require the same, all such papers, passes, sea briefs, charters, bills of lading, dockets, letters, and other documents in writing as shall have been found on board the captured ship or which have any reference to or connection with the captured property, which are in the possession, custody, or power of the captors.

9.

The said papers, documents, and writings shall be regularly marked and numbered by the Commissioner, and the captor, chief officer, or some other person who was present at the taking of the prize and saw that such documents, papers, and writings were found with the prize, must make a deposition before one of the said Commissioners that they have delivered up the same to the Judge or Commissioner as they were found or received, without any fraud, subduction, or embezzlement. If any documents, papers, or writings relative to or in connection with the captured property are missing or wanting, the deponent shall, in his said deposition, account for the same to the best of his knowledge, information, and belief.

10.

The deponent must further swear that if at any time thereafter, and before the final condemnation or

> acquittal of the said property, any further or other papers relating to the said captured property, shall be found or discovered, to the knowledge of the deponent, they shall also be delivered up or information thereof given to the Commissioners or to this Court, which deposition shall be reduced to writing by the Commissioner and shall be transmitted to the Clerk of the Court, as hereinafter mentioned.

An inventory of all papers which had been delivered to him or which he had found on board the *Adula*, was made by Lieut. Anderson, as prize master, and the papers were marked and numbered. The inventory is given in the record (pp. 82–86). On July 25, when he delivered these papers to the prize commissioners, Anderson made his affidavit before them in accordance with the ninth rule. The alleged admission of an error on his part is this:

> "The paper numbered 7 was erroneously named on this list, it being a paper not found on the *Adula*, and is withdrawn."

The description of the paper thus erroneously entered and properly withdrawn is this (inventory, page 83):

> "7. Letter from Capt. Juilen von Ripper, commanding Austro-Hugarian cruiser *Kaiserin and Konigen Maria Theresa*."

The affidavit continued:

> "Affiant further deposes and says that if at any time hereafter and before the final condemnation or acquittal of said property seized, any further or other papers relating to the said captured property shall be found or discovered to the knowledge of the deponent, they shall also be delivered up or information thereof given to the commissioners or to the prize court. Affiant further says that he has de-

livered up to the prize commissioners the said documents, papers, and writings found on the said prize, as they were received by him, without any fraud, subduction, or embezzlement."

Anderson's conduct with respect to the papers, and his deposition before the prize commissioners, were thus a complete and perfect compliance with the prize rules.

It appears that on July 26, 1898, he delivered to the prize commissioners certain other papers which he had found on board the *Adula*. At that time he made a second affidavit (p. 86). The papers were copies of three newspapers which had been published in Kingston on the 9th, 14th, and 25th of June, respectively. These, Anderson said:

> " . . . were upon the steamship *Adula*, together with numerous other newspapers at the time of the seizure of the *Adula* as prize of war in Guantanamo Bay June 29, 1898; that said newspapers were in circulation among the officers of the *Adula;* that affiant did not take possession of said newspapers, however, until after he had delivered the other papers seized to the prize commissioners; that having his attention called to the probable importance of said newspapers by the District Attorney, affiant collected such of said newspapers as were then left on said ship, from the dining saloon and engineer's room of the *Adula*, being informed by the engineer that the other newspapers found on board had been destroyed at quarantine, and affiant now delivers the same to the prize commissioners in the same condition in which the same were found by him."

Here again, we submit, Anderson did his full duty and complied literally with the prize rules. It is not surprising that a prize master should not have attached importance to the newspapers found on board the prize,

nor considered them worthy of classification with the ship's documents or with letters and communications which were being carried upon her. Because these newspapers were not returned to the prize commissioners, it cannot be supposed, or even suggested, that Anderson, who had so carefully and fully performed his duties, would have neglected to return the vessel's passport or license, which would not have been found, like the newspapers, lying around the saloon or engineer's room, but among documents carefully preserved by the master or charterer.

II.

The appellant argues (pages 41, 48–52) that no unfavorable inference can be drawn from the fact that the *Adula* sailed from Kingston for the blockaded port of Cienfuegos without permission from the United States to pass the blockade, or that on that voyage she carried a cargo and discharged it at Cienfuegos. In our brief we have shown that, prior to this voyage, the vessel had formal notice that the blockade had been proclaimed and established, and had respected it by getting passports,—not from a naval officer commanding the blockading fleet,—but from the Government of the United States; and, by being stopped and searched on both of her previous voyages, had learned that the blockade was effective.

Authorities already cited show that by sailing for Cienfuegos, the third time, without permission from the United States, the *Adula* was guilty of a violation of the blockade. Having received due notice of its establishment, she had no right to suppose that it had been raised or discontinued, nor had she any right to suppose that the United States, which had twice been liberal in permitting the ex-

patriation of Cuban refugees, would enlarge its liberality and permit the shipment of cargo to Cienfuegos. It is proven by several members of the captured crew that the cargo carried by the *Adula* on her third voyage was the property of Salcinas, a Spaniard, the real charterer of the vessel, and that he took active charge of its delivery at Cienfuegos.

On this voyage, during which the *Adula* ran the blockade of Cienfuegos, her owner's instructions to her master were the same as those contained in his letter of instructions, directed to Yeates, on June 28 (pp. 32, 12–15). In both the master was warned that he would meet United States vessels and, if stopped by them, should ask permission to pass the blockade, and if such permission were refused endeavor to have that fact endorsed upon the ship's log.

III.

The appellant endeavors to justify the entries made in the *Adula's* log for the 28th and 29th of June. It is contended that the prize court should either have accepted Yeates's testimony as true and wholly consistent with the log entries, or should have ordered him recalled for the purpose of modifying, explaining, and correcting his testimony, so that it would be consistent with the log.

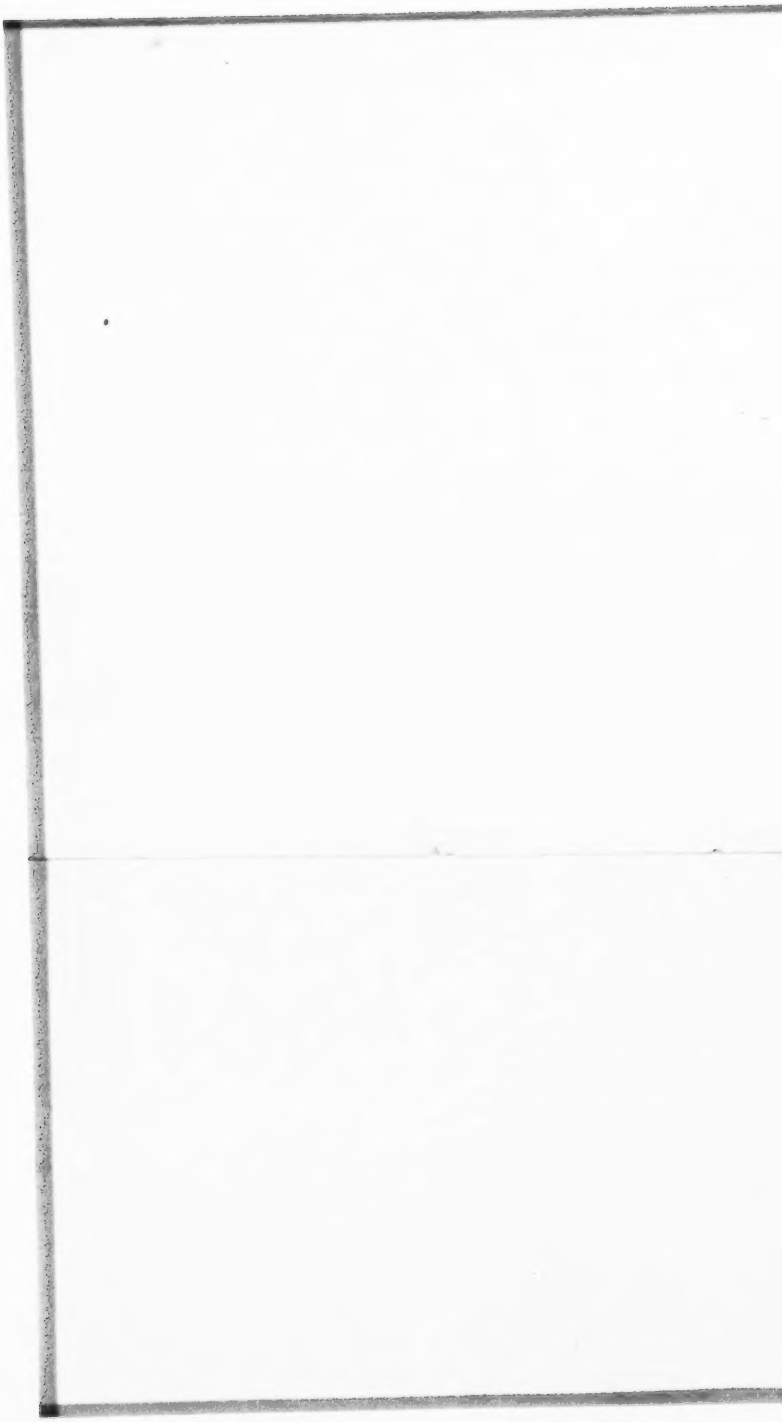
The cases of the *Pizarro*, *Amiable Isabella*, and all other authorities cited, which deal with the ordering of further proofs are consistent in saying that no witness, having testified *in preparatorio*, should thereafter be recalled and permitted to falsify his previous statements.

We have shown that the log entries are on their face erroneous and misleading; also that Yeates's testimony agrees with that given by other officers and members of the

captured crew, all of the testimony being in conflict with the showing of the log.

The deposition of Anderson taken *de bene esse*, pursuant to Sec. 863, R. S. U. S., is referred to simply for convenience. Without it, and without expert knowledge of navigation, the course represented by the log as that pursued by the *Adula* could be graphically reproduced upon a chart of the islands of Jamaica and Cuba.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
of Counsel for Captors.



THE ADULA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

No. 167. Argued November 7, 1899. — Decided February 26, 1900.

A legal blockade may be established by a naval officer acting upon his own discretion, or under direction of superiors, without governmental notification.

In view of the operations being carried on for the purpose of destroying or capturing the Spanish fleet at Santiago de Cuba, and the reduction of that place, it was competent for the Admiral commanding the squadron to establish a blockade there, and at Guantanamo, as an adjunct to such operations, and such blockade was valid as against all vessels having notice thereof.

It appearing that Guantanamo was eighteen miles from the mouth of Guan-

Statement of the Case.

tanamo Bay and was still occupied by the enemy, *held*, that although the American troops occupied the mouth of the bay, the blockade was still operative as to vessels bound to the city of Guantanamo.

The legal effect of a lawful and sufficient blockade is a closing of the port, and an interdiction of the entrance of all vessels of whatever nationality or business.

The sailing of a vessel with a premeditated intent to violate a blockade, is *ipso facto* a violation of the blockade, and renders her subject to capture from the moment she leaves the port of departure.

If a master has actual notice of a blockade, he is not at liberty even to approach the blockaded port for the purpose of making inquiries.

If a neutral vessel be chartered to an enemy, she becomes to a certain extent and *pro hac vice* an enemy's vessel, and a notice to her charterer of the existence of a blockade is a notice to the vessel.

It appearing in this case that both the charterer and the vessel had been previously engaged in bringing away refugees from Cuba, and were chargeable with notice of the military and naval operations against that island, that such facts were of common knowledge at the port from which she sailed, and that intercourse with Cuban ports was dangerous; and it appearing from a preponderance of evidence that both the charterer and master of the vessel had knowledge of the blockade: *held*, that the vessel was properly condemned.

If an examination of the ship's papers and the testimony of the crew, taken *in preparatorio*, make a case for condemnation, an order for further proof is only made where the interests of justice clearly require it: *held*, in this case that there was no error in denying the motion of the claimant for further proofs.

THIS was a libel in prize against the British steamship Adula, then under charter to a Spanish subject, which was seized June 29, 1898, by the United States cruiser Marblehead, for attempting to run the blockade established at Guantanamo Bay in the island of Cuba, and was subsequently sent into the port of Savannah for adjudication.

The Adula, a vessel of 372 tons, was built at Belfast in 1889, for her owner, the Atlas Steamship Company, Limited, a British corporation, and was registered in the name of its managing director, Sir William Bowers Forwood. Prior to the American-Spanish war she was engaged in general trade between Kingston and other ports on the coast of Jamaica, and from time to time had made voyages to Cuban ports. After the breaking out of the war the steamer was chartered by various persons in the intervals of its regular work, for voyages to Cuba.

Statement of the Case.

In the meantime, however, under the command of Rear Admiral Sampson, a blockade was established at Santiago, where the Spanish fleet lay under the command of Admiral Cervera. Upon June 8, a blockade of Guantanamo Bay was also established by order of Admiral Sampson, the blockading squadron being under the command of Commander McCalla. Both of these blockades were maintained during the war. On April 22, a blockade of the north coast of Cuba between Cardenas and Bahia Honda and of Cienfuegos on the south coast, was declared by the President. On June 27, the President by proclamation gave notice that the Cuban blockade had been extended to include all the ports on the southern coast between Cape Frances and Cape Cruz. This included the port of Manzanillo. On the 28th, this proclamation was made known to the vessels off Guantanamo.

On June 27, the Adula, then at Kingston, was engaged in taking on a cargo for shipment. On the 28th she discharged this cargo, and the agent of the Atlas Company entered into a charter party with one Solis, a Spanish subject formerly resident in Manzanillo, of the material parts of which the following is a copy:

The Adula was put at the disposal of the charterer "for the conveyance of passengers from Cuban ports hereinafter to be named, to Kingston. The ports that the vessel is to go to are Manzanillo, Santiago and Guantanamo; but it is distinctly understood and agreed by the parties aforesaid that it shall not be deemed a breach of this agreement should the steamer be prevented from entering any of those ports from causes beyond the control of the company, but that should she be able to enter one or all of them, she shall embark the passengers that the charterer shall engage for her and proceed on her voyage. If she is not permitted to enter either Manzanillo, Santiago or Guantanamo, the vessel is to return to Kingston, and the voyage shall be considered completed, and the charter money hereinafter referred to earned without any deductions. . . . The charterer is to provide a good and efficient government pilot to conduct the ship safely into the ports which have been named. Should she be permitted to

enter them the charterer guarantees that the proper and efficient clearances shall be obtained for each port, so that the ship shall not be subjected to any fines for breach of regulations. . . . The company will give the option to the charterer for another voyage similar to this on similar terms, providing the charterer gives the company twenty-four hours' notice after the arrival of the steamer at Kingston."

Accompanying this charter were certain instructions, printed in the margin,[1] from the agent of the company to Captain Yeates, the commander of the Adula. These were taken from

---

[1] ATLAS STEAMSHIP COMPANY,
JAMAICA AGENCY, *June* 28, 1898.

Captain Yeates, S. S. Adula.

DEAR SIR: I enclose herein a copy of the agreement under which your vessel is proceeding on, and on board the ship will be the charterer, to whom I now introduce you, Mr. José R. Solis, and I ask you to show him every attention on the voyage.

You will see by a perusal of the agreement that you are on a voyage wholly and solely for the conveyance of refugees from the ports named to Kingston.

On your arrival at Guantanamo, to which port you will proceed direct, you will find, no doubt, American warships off the port. You will, when signalled to, stop immediately and communicate to the commanding officer the voyage that you are on, and, in fact, you can show him these sailing orders, and I do not think that the commanding officer will make any trouble whatever to your continuing the voyage into the port.

You must be careful on your arrival there not to interfere or in any way make any observation or sketches of anything that you may see or hear of, but adhere strictly to the duties of your ship.

At Guantanamo it is likely there may be some difficulty in obtaining a pilot, and if the commanding officer gives you permission to proceed it is just possible that he may be able to tell you where you can obtain the services of a pilot to go in.

From Guantanamo you will proceed to off Santiago. Here you will meet the other fleet, and carry the same instructions out with them as I have mentioned to you in reference to Guantanamo. The charterer is telegraphing at once to Santiago for a pilot to come off to meet the ship, if permission is granted, to pilot your ship into the port.

From Santiago you will proceed to Manzanillo, and from thence back to Kingston. The charterer, Mr. Solis, may order you direct from Guantanamo to Kingston or from Santiago to Kingston, and in such a case you will follow out his orders, which he will give you in writing. He has the option of going to the three ports, but it may be convenient for him to go to only one or even two. The boat's crew that is mentioned in the appendix of this agreement

the ship when she was captured. The Adula left Kingston late in the afternoon of June 28. Before sailing, Solis asked from the United States consul at Kingston a permit to enter the ports of Guantanamo, Santiago and Manzanillo. This the consul refused to give without special instructions from Washington. Just before sailing to Santiago, Solis cabled for a licensed pilot to meet the Adula. On leaving Kingston she took her course around Morant Point at the easterly end of the island, first toward Santiago, and then to Guantanamo, and about 4 P.M. of the following day was met before reaching the harbor and brought to by the steamship Vixen; was directed to proceed, entered the harbor of Guantanamo, and was seized by the Marblehead, which, with other vessels of the fleet, was lying inside the bay, and was sent to Savannah, where a libel in prize was filed against her on July 21, 1898. The depositions *in preparatorio* were taken July 21, and her owner, the Atlas Steamship Company, appeared as claimant and filed its answer. The case was heard upon the proofs *in preparatorio*, and a decree of condemnation entered July 28. (89 Fed. Rep. 351.) Before the decree, claimant moved for leave to take further proofs. The court set the motion down for August 9, giving claimant leave to serve such affidavits and other papers as it might desire to read upon the motion, and directed the entry of the decree to be without prejudice to such motion. The motion was finally denied, and the vessel released upon a stipulation for her value.

From the decree of condemnation her owner and claimant appealed to this court.

Mr. Everett P. Wheeler for appellant.

---

you will provide, but it will be necessary for you to have the ensign in the stern, so as to show your nationality.

You will not allow any provisions of any sort to leave your ship at any of the ports or to do anything that is contrary to the laws of the country or that may be interpreted as a breach of faith in being allowed to pass the blockade and enter the ports, and I must ask you not to permit any of your crew to land at any of the ports, and only yourself, if necessary, to visit the British consul.

Wishing you a pleasant voyage, I am, sir,

Yours faithfully,

(S'g'd) W. PepLoe Forwood, *Gen. Ag't, Jca.*

Mr. James H. Hayden for the captors. *Mr. Joseph K. McCammon* was on his brief.

Mr. Assistant Attorney General Hoyt for the United States.

Mr. George A. King, *Mr. William B. King* and *Mr. William E. Harvey* filed a brief for the captors.

Mr. Justice Brown, after stating the case, delivered the opinion of the court.

The rectitude of the decree of the District Court condemning the Adula as prize of war depends upon the existence of a lawful and effective blockade at Guantanamo, the knowledge of such blockade by those in charge of the vessel, and their intent in making the voyage from Kingston.

1. No blockade of Guantanamo was ever proclaimed by the President. A proclamation had been issued June 27, establishing a blockade of all ports on the southern coast of Cuba between Cape Frances on the west and Cape Cruz on the east, but as both Santiago and Guantanamo are to the eastward of Cape Cruz, they were not included. It appears, however, that blockades of Santiago and Guantanamo were established in the early part of June by order of Admiral Sampson, commander of the naval forces then investing the ports on the southern coast of Cuba, and were maintained as actual and effective blockades until after the capture of the Adula.

The legality of a simple or actual blockade as distinguished from a public or Presidential blockade is noticed by writers upon international law, and is said by Halleck to be "constituted merely by the fact of an investment, and without any necessity of a public notification. As it arises solely from facts it ceases when they terminate; its existence must, therefore, in all cases, be established by clear and decisive evidence." (Halleck Int. L. chap. 23, sec. 10.) A *de facto* blockade was also recognized as legal by this court in the case of *The Circassian*, 2 Wall. 135, 150, in which the question arose as to the blockade of New Orleans during the civil war. In delivering the opinion of the court, the Chief Justice observed: "There is

a distinction between simple and public blockades which supports this conclusion. A simple blockade may be established by a naval officer, acting upon his own discretion or under direction of superiors, without governmental notification; while a public blockade is not only established in fact, but is notified, by the government directing it, to other governments. In the case of a simple blockade, the captors are bound to prove its existence at the time of capture; while in the case of a public blockade, the claimants are held to proof of discontinuance in order to protect themselves from the penalties of attempted violation." A like ruling was made by Sir William Scott in the case of *The Rolla*, 6 C. Rob. 364, which was the case of an American ship and cargo, proceeded against for the breach of a blockade at Montevideo, imposed by the British commander. It was argued, apparently upon the authority of *The Henrick and Maria*, 1 C. Rob. 123, that the power of imposing a blockade is altogether an act of sovereignty which cannot be assumed or exercised by a commander without special authority. But says the learned judge: "The court then expressed its opinion that this was a position not maintainable to that extent; because a commander going out to a distant station may reasonably be supposed to carry with him such a portion of sovereign authority, delegated to him, as may be necessary to provide for the exigencies of the service upon which he is employed. On stations in Europe, where government is almost at hand to superintend and direct the course of operations, under which it may be expedient that particular hostilities should be carried on, it may be different. But in distant ports of the world it cannot be disputed, I conceive, that a commander must be held to carry with him sufficient authority to act, as well against the commerce of the enemy, as against the enemy himself, for the immediate purpose of reduction." See also *The Johanna Maria*, Deane on Blockades, 86.

In view of the operations then being carried on for the purpose of destroying or capturing the Spanish fleet and reducing Santiago, we think it was competent for Admiral Sampson to establish a blockade there and at Guantanamo as an adjunct to such operations. Indeed, it would seem to have been

a necessity that restrictions should be placed upon the power of neutrals to carry supplies and intelligence to the enemy, as they would be quite sure to do, if their ships were given free ingress and egress from these harbors. While there could be no objections to vessels carrying provisions to the starving insurgents, if their destination could be made certain, the probabilities were that such provisions carried to a beleaguered port, would be immediately seized by the enemy and used for the sustenance of its soldiers. The exigency was one which rendered it entirely prudent for the commander of the fleet to act, without awaiting instructions from Washington.

But it is contended that at the time of the capture, the port of Guantanamo was completely in the possession and control of the United States, and therefore that the blockade had been terminated. It appears, however, that Guantanamo is eighteen miles from the mouth of Guantanamo Bay. Access to it is obtained either by a small river emptying into the upper bay, or by rail from Caimanera, a town on the west side of the upper bay. It seems that the Marblehead and the Yankee were sent to Guantanamo on June 7; entered the harbor and took possession of the lower bay for the use of American vessels; that the Panther and Yosemite were sent there on the 10th, and on the 12th the torpedo boat Porter arrived from Guantanamo with news of a land battle, and from that time the harbor was occupied by naval vessels, and by a party of marines who held the crest of a hill on the west side of the harbor near its entrance, and the side of the hill facing the harbor. But the town of Guantanamo, near the head of the bay, was still held by the Spanish forces, as were several other positions in the neighborhood. The campaign in the vicinity was in active progress, and encounters between the United States and Spanish troops were of frequent occurrence.

In view of these facts we are of opinion that, as the city of Guantanamo was still held by the Spaniards, and as our troops occupied only the mouth of the bay, the blockade was still operative as against vessels bound for the city of Guantanamo. Here again the case of *The Circassian*, 2 Wall. 135, is decisive. The Circassian was captured May 4, 1862, for an attempted

violation of the blockade of New Orleans. The city, including the ports below it on the Mississippi, was captured during the last days of April, and military possession of the city taken on May first. It was held that neither the capture of the forts nor the military occupation of the city terminated the blockade, upon the ground that it applied, not to the city alone, but controlled the port, which included the whole parish of New Orleans, and lay on both sides of the Mississippi, and all the ports on that river and on the lakes east of the city. The following language of the Chief Justice is equally pertinent to this case: "Now, it may be well enough conceded that a continuous and complete possession of the city and the port, and of the approaches from the Gulf, would make a blockade unnecessary, and would supersede it. But, at the time of the capture of the Circassian, there had been no such possession. Only the city was occupied, not the port, much less the district of country commercially dependent upon it, and blockaded by its blockade. Even the city had been occupied only three days. It was yet hostile; the rebel army was in the neighborhood; the occupation, limited and recent, was subject to all the vicissitudes of war. Such an occupation could not at once, of itself, supersede or suspend the blockade. It might ripen into a possession which would have that effect, and it did; but at the time of the capture it operated only in aid and completion of the naval investment." The occupation of the city terminates a blockade because, and only because, it supersedes it, and if a vessel be bound to a port or place beyond, which is still occupied by the enemy, the occupation of the mouth of the harbor does not necessarily terminate the blockade as to such places.

Granting the existence of a lawful and sufficient blockade at Guantanamo, its legal effect was a closing of the port, and an interdiction of the entrance of all vessels of whatever nationality or business. It is well described by Sir William Scott in *The Vrouw Judith*, 1 C. Rob. 126, 128, "as a sort of circumvallation round a place, by which all foreign connection and correspondence is, as far as human force can effect it, to be entirely cut off. It is intended to suspend the entire commerce of that place, and a neutral is no more at liberty to

assist the traffic of exportation than of importation. The utmost that can be allowed to a neutral vessel is, that having already taken on board a cargo before the blockade begins, she may be at liberty to retire with it. But it must be considered as a rule which this court means to apply, that a neutral ship departing can only take away a cargo *bona fide* purchased and delivered, before the commencement of the blockade. If she afterwards takes on board a cargo it is a fraudulent act and a violation of the blockade." It is also said by Phillimore, 3 Int. Law, 383, that "the object of a blockade is to prevent exports as well as imports, and to cut off all communication of commerce with the blockaded place." The sailing of a vessel with a premeditated intent to violate a blockade is *ipso facto* a violation of the blockade, and renders the vessel subject to capture from the moment she leaves the port of departure. *Yeaton* v. *Fry*, 5 Cranch, 335; *The Circassian*, 2 Wall. 135; *The Frederick Molke*, 1 C. Rob. 72; *The Columbia*, 1 C. Rob. 130; *The Neptunus*, 2 C. Rob. 110; Wheaton on Captures, 196. If a master have actual notice of a blockade, he is not at liberty even to approach the blockaded port for the purpose of making inquiries of the blockading vessels, since such liberty could not fail to lead to attempts to violate the blockade under pretext of approaching the port for the purpose of making such inquiries. *The Admiral*, 3 Wall. 603; *The Prize cases*, 2 Black, 635, 677; Duer on Ins. 661; *The Cheshire*, 3 Wall. 231; *The James Cook*, Edwards, 261; *The Josephine*, 3 Wall. 83; *The Spes*, 5 C. Rob. 76; *The Betsey*, 1 C. Rob. 280; *The Neptunus*, 2 C. Rob. 110; *The Little William*, 1 Acton, 141, 161; *Sperry* v. *Delaware Ins. Co.*, 2 Wash. C. C. 243. If there be any distinction in this particular between a proclaimed blockade and an actual blockade by a naval commander, it does not aid the Adula in view of the admitted fact that she was informed by the Vixen that the port was under the control of the United States military forces, and that the war ships were visible before she entered the bay.

In this connection we are cited by counsel for the Adula to a change in the law said to have been effected by the adhesion of this Government, at the beginning of the war, to the

declaration of Paris abolishing privateering. This supposed change apparently rests upon an extract from a French treatise upon international law by Pistoye and Duverdy, vol. 1, p. 375, in which it is said that by the modern law, in consequence of the declaration of Paris, a vessel must be notified to depart from the blockaded port before she can be captured, and that the contrary rule was the result of the doctrine of the British Orders in Council during the Napoleonic wars, which is now given up by that country. It is also said that "the old rule was that it was a breach of blockade to enter upon a voyage to the blockaded port. This rule is now changed, because neutrals are obliged only to respect effective blockades. It may well be that a blockade of which official notice has been given is not an effective blockade, or it may be that a blockade which has been established by a sufficient force may have ceased to exist. Neutrals then have the right to begin a voyage to a blockaded port in order to see if the blockade still continues. They are only guilty when, while the blockade continues, they actually endeavor to break it."

We cannot, however, accept this opinion as overruling in any particular the prior decisions of this court in the cases above cited, to the effect that a departure for a blockaded port with intent to violate the blockade renders the vessel liable to seizure. When Congress has spoken upon this subject it will be time enough for this court to act. We cannot change our rulings to conform to the opinions of foreign writers as to what they suppose to be the existing law upon the subject.

We have not overlooked in this connection the provision contained in Art. 18 of Jay's treaty of 1794, to the effect that "whereas, it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is either besieged, blockaded or invested, it is agreed, that every vessel so circumstanced, may be turned away from such port or place, but she shall not be detained nor her cargo, if not contraband, confiscated, unless after notice she shall again attempt to enter." *Fitzsimmons* v. *Newport Ins. Co.*, 4 Cranch, 185. Waiving the question whether this clause of Jay's treaty was abrogated by the war of 1812, and accepting it as a cor-

rect exposition of the law of nations, it applies only to vessels which have sailed for a hostile port or place without knowing that the same is either besieged, blockaded or invested. The whole case against the Adula depends upon the question whether those in charge of her knew before she left Kingston that Santiago and Guantanamo were blockaded. If they did, the treaty does not apply. If they did not, they are entitled to the benefit of this principle of international law. In the case of the *Maryland Ins. Co.* v. *Woods*, 6 Cranch, 29, in which it was held that the vessel could not be placed in the situation of one having notice of the blockade until she was warned off, the decision was placed upon the express ground that orders had been given by the British government, and communicated to our government, "not to consider blockades as existing, unless in respect to particular ports which may be actually invested, and then not to capture vessels bound to such ports, unless they shall have been previously warned not to enter them." This order was treated by the court as a mitigation of the general rule so far as respected blockades in the West Indies.

2. The questions concerning the notification of, and the intent to, violate blockade depend largely upon the same testimony, and may be properly disposed of together. There is no doubt that the Adula belonged to a British corporation, the Atlas Steamship Company; was registered in the name of the managing director of such corporation; flew the British flag, and prior to the Spanish-American war was engaged in general trade between Kingston and other ports on the coast of Jamaica, in connection with other steamers of the same line from New York, and from time to time had made voyages to Cuban ports. After the breaking out of the war the steamer was chartered by various persons, in the intervals of its regular work for voyages to Cuba. On May 7, in pursuance of a verbal arrangement between the agent of the steamship company and the American consul, the Adula was sent to Cienfuegos in Cuba to bring away refugees. On arrival off Cienfuegos she was boarded by officers of the U. S. S. Marblehead, who, upon being shown the permit and the ship's papers, allowed her to proceed, though the officers served the master with a

printed copy of the President's proclamation blockading Cienfuegos and several ports on the north side of Cuba, and made a memorandum on the ship's log that they had done so. She sailed from Cienfuegos May 10, with 350 passengers, mostly women and children; was again boarded on leaving the port, but was allowed to proceed.

On May 16, she was chartered by a Cuban refugee to proceed to Santiago; arrived there the following day, and returned with 200 passengers. No war ships were off Santiago at that time. She arrived at Kingston on the 19th, and landed her passengers.

On May 21, she was again chartered to go to Cienfuegos, having a permit from Washington, through the consul, to pass the blockade. She reached the blockading fleet on the 23d, was boarded by a boat from one of the vessels, and was again given permission to proceed; was arrested upon suspicion by the Spanish authorities in the port of Cienfuegos, but after a detention of sixty hours was released. She sailed again on May 26 directly for Kingston; saw no war ships in sight, and arrived at Kingston on May 28.

After making two of her ordinary coasting voyages around Jamaica, she was offered a further charter for Cienfuegos, but could not obtain the permission of the American consul, who told the master he had no authority to grant it. She left June 15, with a letter of instructions to the captain to proceed to the fleet off Cienfuegos, then under a public blockade, to ask permission from them to enter the port, and if granted, to go in, and if not granted, to return to Jamaica. She arrived at Cienfuegos June 17; landed some provisions which had been shipped for her passengers, found no war ships there, and sailed away on the 19th with only ninety-eight passengers. Sixty miles S.S.E. from Cienfuegos she was stopped by the U. S. S. Yankee, and an officer sent on board. The master showed the boarding officer his instructions and the ship's papers, as well as the passenger list; was informed that Cienfuegos was blockaded, and that he must not enter it again. She arrived in Kingston on June 21; proceeded around the island on her usual coasting trip, and returned to Kingston on the 27th.

She was chartered for her last voyage June 28, by one Solis,

a Spanish subject, born near Havana, and living with his family at Manzanillo. He had landed recently from Manzanillo with a cargo of refugees. He had lived in Cuba, and at one time had been the French consul at Manzanillo, though there was no evidence that he had ever coöperated with the Spanish authorities during the war, or rendered aid or comfort to the Spanish forces. He had, however, a passport from the Spanish consul to enter the cities to which he was bound and take passengers away as refugees. He had previously been engaged in shipping supplies to Cuban ports and returning with passengers for Jamaica. He also carried a special personal Spanish passport granted the year before. Such being his political character, he entered into a charter party with the Atlas Steamship Company, under which he was at liberty to go to Manzanillo, Santiago and Guantanamo, and if not permitted to enter these harbors, to return to Kingston. An option was also given to the charterer for another similar voyage upon like terms upon twenty-four hours' notice after arrival at Kingston. The charter was for the conveyance of passengers from Cuban ports to Kingston at one hundred pounds per day. Solis was entered upon the ship's articles as supercargo. She was evidently chartered for his personal benefit, with power to name the port which she was to visit, but with no right to interfere with the navigation of the ship. Solis had made the same sort of trip twice before with English schooners, and expected upon this trip to make $19,000 net profit. He appeared to have known nothing about the previous voyages of the Adula, and had seen her for the first time only about two months before. The vessel bore a passport from the Spanish consul at Kingston; a bill of health *viséd* by the Spanish consul. With regard to his knowledge of the blockade at Guantanamo he testified as follows:

"I knew that there was a condition of war existing between America and Spain on the 21st. They told me on board the Adula that the blockade of Guantanamo was published on the 27th, the day before. I had not heard it before I left Kingston. I did not know officially Guantanamo was blockaded. On board the Adula I heard that on the 27th there was issued

an order from the President of the United States declaring a blockade of the port of Guantanamo, but I did not know it until we arrived at Guantanamo. At Kingston I heard there were some war ships at Guantanamo, and I told Captain Forwood that the first thing I would do would be to go to the admiral and tell him my intentions. I did not think the papers in Kingston published the blockade. I did not see it if they did. The people generally did not talk about it. I read something about 'McCalla's camp.' I understood Guantanamo was not blockaded by the United States. I heard that marines had been landed at the entrance to Guantanamo, Caimenera — the bay is called Caimenera — and that the marines had possession of the port, and that the ships were inside. I cannot tell when I received the information that marines had been landed there and taken possession of the point of Guantanamo or Caimenera. Perhaps it was one or two days before. I don't know what the others knew about a state of war existing. I understood Guantanamo was not declared officially blockaded, although there were some vessels there. I got that information from newspapers in Kingston, and from those newspapers I got the information that marines had been landed at the entrance to the bay on the east side; they call it 'East Point.'"

It further appeared that the American consul warned Mr. Forwood, the agent of the ship at Kingston, of the existence of the blockade in the following language, as stated by the agent himself: "'Well, Forwood, I would not advise you to let the ship go; they won't let her into Guantanamo, and they will be watching for her.' I said to him, 'Oh, Dent, let me show you the captain's instructions. He has got orders to go to the fleet there and ask their permission to take some refugees.' 'Well,' he said, 'I don't know, but they will be watching for her, and I think that Senor Solis is a Spanish agent, carrying $300,000 in gold to buy over the rebels in the American camp.' I told him that I had inquired about the man, and that it was one of the usual Kingston yarns." It also appears that Mr. Forwood knew that Mr. Solis was a Spaniard, and had been shipping supplies to Cuban ports. After taking on board a large supply

of coal, the Adula left Kingston on June 28; rounded Morant Point on the east end of the island of Jamaica; proceeded at her usual speed toward Santiago, and sighted the blockading fleet off that port about noon of the 29th. The captain gives as his reason for going by the way of Santiago that he was not acquainted with the coast line to the eastward of that port; had no large scale chart, and therefore steered more to the westward than he should have done, because he knew the coast about Santiago, and did not know that about Guantanamo; but it is quite as probable that it was the presence of a number of war vessels off Santiago which sent her to Guantanamo. She was hailed by the Vixen within half a mile of the entrance to the harbor of Guantanamo, brought to, and then directed into the harbor, where several war vessels were lying, and was shortly thereafter seized by order of Commander McCalla of the Marblehead.

In his testimony before the prize commissioners, Captain Yeates, master of the Adula, stated that he was stopped by the Vixen about a half a mile from the entrance to the bay and permitted to proceed, and that it was not until after he had anchored that he was acquainted with the blockade of the harbor. One of the crew testified somewhat to the contrary and swore that "about three days before I left Kingston I heard that Guantanamo was blockaded; I heard it from people around the streets; I did not see it; I heard it was in the papers; I never heard any of the officers of the Adula or people on board talking about Guantanamo being blockaded, and I don't know exactly whether the owner or master or officers of the ship Adula knew that Guantanamo was blockaded. I knew about it, but I don't know anything about them. I don't know how I found it out, but I heard it on the streets of Kingston." He also swore "that at that time he went up to the mouth of the harbor, and at that time, when we got to Guantanamo, we found the war ships there blockading the harbor." A small cruiser, the Vixen, "ran up across our bow and the captain of the cruiser asked us: 'Didn't you sight the war ships down at Santiago?' and the captain said, 'Yes.' And the captain stopped, and he said: 'Didn't you hear that Guantanamo was

blockaded?' and our captain said 'Yes.' Then he said, 'You can proceed on.' I heard about the blockade in Kingston, but after leaving Kingston, until we met the cruiser, I never heard anything more about it." Captain Yeates also testified that he expected to be stopped when he approached Santiago. Mr. Solis, who had chartered the Adula for this voyage, testified that he was told, while on board the Adula, that the blockade of Guantanamo was published on the 27th, the day before, but that he had not heard of it before he left Kingston, though he had heard, while in Kingston, that there were some war ships at Gauntanamo. At the time the Adula was captured she was searched for her ship's papers and other documents and letters. Several letters were found, as well as copies of a newspaper published at Kingston, which spoke of the American military and naval operations both at Santiago and Guantanamo.

Among these extracts from The Gleaner of July 14, 1898, is the following, apparently telegraphed from London: "A dispatch boat off Santiago reports that the Americans now hold thirty-five miles of the coast east of Santiago, including Guantanamo harbor, and that 20,000 Spanish troops at Santiago are preparing to desperately resist the Americans, who have landed 3000 rifles, 300,000 rounds of ammunition, and large stores of provisions;" and the following from the issue of June 25: "On board the Adula, which arrived from Cienfuegos this week, there was an individual officially appointed by the Captain General in Cuba to make arrangements in Jamaica for regularly supplying the Spanish troops with provisions; in fact, to make Jamaica a base for Spanish purposes."

In this connection it would seem from the report of the Bureau of Navigation that the consul at Kingston telegraphed to Washington that the Under Secretary of the Captain General of Cuba and certain Spanish naval officers "came aboard the Adula with, it is supposed, $250,000 to purchase provisions to be taken to Manzanillo for Cervera. . . . Extensive preparations being made for shipping provisions to Cuba."

In a letter from Captain Yeates to his parents, under date of July 13, and apparently written while the Adula was at Savannah, he says: "And now to tell you dear ones how it is

or was that we got into this pickle, which has not come as any surprise, as I have anticipated this for some time; it is I did not think I should be in command when it happened, but it was my luck to be, I suppose." Speaking of the capture, he says: "They turned the ship upside down; took my papers; measured the coals, and took stock generally. As far as the ship is concerned she was on perfectly legitimate business, fetching refugees. Whether Mr. Solis chartered the ship for that purpose alone, of course, has to be proved, and we are now on our way to Savannah for that purpose with a prize crew and Lieutenant Anderson in charge." In a postscript dated at Savannah, July 15, he says: "We have not yet reached the town proper, for we are going through the same performance as we did at Tampa, but I was not caught this time, for I managed to keep my things out of the oven."

As tending to show the good faith of this expedition, and more particularly the owners of the Adula, much reliance is placed upon the letter of Mr. Forwood to Captain Yeates of June 28, the day upon which the Adula left Kingston, in which he instructs him, in case he finds American war ships off Guantanamo, to stop immediately upon being signalled, and communicate to the commanding officer the object of the voyage, and to be careful upon his arrival "not to interfere, or in any way make any observations or sketches of anything you may see or hear of, but adhere strictly to the duties of your ship," and observe the same precautions off Santiago. In this letter he also instructs him not to allow any provisions to leave the ship, or to do anything which could be interpreted as a breach of faith in being allowed to pass the blockade and enter the ports. While this letter doubtless tends to show good faith on the part of Mr. Forwood, still it was written with full information from Mr. Solis that the consul had refused to give him a passport, without permission from the American authorities in Washington. That Mr. Forwood recognized the necessity of an authority from Washington in order to pass the blockade is shown by his letter to Captain Walker of May 21, 1898, in reference to one of the voyages to Cienfuegos, in which he says: "In giving this letter to the blockade, be sure and ask

the officer if he would allow the ship to pass another voyage without cabling to Washington."

From all the testimony in the case it appears very clear:

That Guantanamo was actually and effectively blockaded by orders of Admiral Sampson from June 7 until after the capture of the Adula;

That the Adula was chartered to a Spanish subject for a voyage to Guantanamo, Santiago or Manzanillo, for the purpose of bringing away refugees, and that such voyage was primarily, at least, a commercial one for the personal profit of the charterer. During such charter she was to a certain extent, *pro hac vice*, a Spanish vessel, and a notice to Solis of the existence of the blockade was a notice to the vessel. *The Ranger*, 6 C. Rob. 126; *The Yonge Emilia*, 3 C. Rob. 52; *The Napoleon*, Blatch. Prize Cases, 296. The fact of her sailing under a Spanish passport — in fact, an enemy's license — is not devoid of significance. Indeed, we have in several cases regarded this as sufficient ground for condemnation. *The India*, 8 Cranch, 181; *The Aurora*, 8 Cranch, 203; *The Hiram*, 1 Wheat. 440; *The Ariadne*, 2 Wheat. 143. This passport gave the Adula authority to enter the Cuban ports and take away refugees, and it is a circumstance worthy of notice that it could not be found when the vessel was captured. Solis acknowledged its existence, but made no effort to account for its loss;

Both Solis himself and the Adula had been previously engaged in similar enterprises to the coast of Cuba, and were chargeable with notice, not only of war between the United States and Spain, but with the fact of military and naval operations upon the southern coast of Cuba;

The fact of such war, that the object of it was the expulsion of the Spanish forces from Cuba, and that military and naval operations were being carried on by us with that object in view, must have been matters of common knowledge in Kingston, as well as the fact that the commerce with the southern ports of Cuba was likely to be interrupted, and that all intercourse with such ports would become dangerous in consequence of such war;

While the mission of the Adula was not an unfriendly one

to this Government, she was not a cartel ship, privileged from capture as such, but one employed in a commercial enterprise for the personal profit of the charterer, and only secondarily, if at all, for the purpose of humanity. Her enterprise was an unlawful one, in case a blockade existed, and both Solis and the master of the Adula were cognizant of this fact. The direction of the commanding officer of the Vixen, which overhauled the Adula off Guantanamo, to enter the harbor, cannot be construed as a permission to violate the blockade, as such permission would not be within the scope of his authority. *The Hope*, 1 Dod. 226; *The Amado*, Newb. 400; *The Joseph*, 8 Cr. 451; *The Benito Estenger*, *post* 568.

That upon arrival off Santiago the blockading fleet was plainly visible, and we think there is a preponderance of evidence to the effect that both Solis and the master of the Adula knew of the actual blockade, that it was generally known in Kingston before she sailed, and that the Adula was chargeable with a breach of it, notwithstanding the letter of instructions from Mr. Forwood to Captain Yeates. As the blockade had been in existence since June 7, it is scarcely possible that, in the three weeks that elapsed before the Adula sailed, it should not have been known in Kingston, which was only a day's trip from the southern coast of Cuba, and with which it appears to have been in frequent communication. This probability is confirmed by the direct testimony of the sailor Morris, that it was matter of common talk in Kingston. The testimony of Solis, that he did not know "officially" that Guantanamo was blockaded, by which we are to understand that it had not been officially proclaimed, is perfectly consistent with a personal knowledge of the actual fact. His statement seems to be little more than a convenient evasion. Upon the principle already stated his knowledge was the knowledge of the ship.

We think the facts herein stated outweigh the general statement of the officers that they had not heard of the blockade.

3. There was no error in denying the motion of the claimant to take further proofs. It appears from the opinion of the court that "the hearing upon the proceedings for condemnation was upon the evidence afforded by the examination of the

captured crew taken upon standing interrogatories, the ship's papers, and other evidence of a documentary character found upon the ship by the captors. This was done in conformity to the established rule in prize causes."

The motion to take further proof was made upon the affidavit of Robert Gemmell, the New York agent of the company, the statement of W. P. Forwood, the Kingston agent, annexed thereto, as well as his own affidavit and exhibits, and upon the counter testimony of Anderson, Ellenberg and Gill taken *de bene esse*. Upon the hearing of this motion the court considered the allegations of Forwood, attached to Gemmell's affidavit, as if Forwood had testified upon depositions regularly taken, giving due weight to the same in connection with other evidence in the case; and was of opinion that the evidence as it stood was not susceptible of any satisfactory explanation; and comparing the proof proposed to be brought forward with that already in the case, came to the conclusion that the legal effect of the facts before the court could not be varied by the explanation offered. The motion was denied. In considering this case we have also given effect to these affidavits, and have come to the conclusion that, if they are to be taken as true, and the further proofs, if taken, would support them, they would not change our opinion with respect to the affirmance of the decree.

If an examination of the ship's papers and of the crew, taken *in preparatorio*, upon which the cause is first heard in the District Court, make a case for condemnation, the order for further proof is, as stated in *The Gray Jacket*, 5 Wall. 342, 368, always made with extreme caution, and only where the interests of justice clearly require it. If the ship's papers and the testimony of the crew do not justify an acquittal, it is improbable that a defence would be established by further proof; and as the interest of all parties require that prize causes be quickly disposed of, it is only where the testimony *in preparatorio* makes a case of grave doubt, that the court orders the taking of further proofs. *The Pizarro*, 2 Wheat. 227; *The Amiable Isabella*, 6 Wheat. 1, 77; Benedict's Adm'y, sec. 512 *a*; Story on Prize Courts, 17.

It was said by Sir William Scott in *The Sarah*, 3 C. Rob. 330, that "it has seldom been done except in cases where there has appeared something in the original evidence, which lays a suggestion for prosecuting the inquiry farther. In such case the court has allowed it; but when the matter is foreign, and not connected with the original evidence of the cause, it must be under very peculiar circumstances indeed that the court will be induced to accede to such an application; because, if remote suggestions were allowed, the practice of the court would be led away from the simplicity of prize proceedings, and there would be no end to the accumulation of proof that would be introduced in order to support arbitrary suggestions."

These remarks are specially pertinent to the offer of further proof that, while Solis owed allegiance to the Queen of Spain, yet, that he left Cuba soon after the war broke out, took no part in the hostilities, but on the contrary had done all in his power while he remained in Cuba to assist citizens of the United States residing there; had sided with the natives of Cuba, and was desirous that a government should be established in the island under the auspices of the United States. As was observed in the very satisfactory opinion of the District Judge in this case, this evidence was altogether irrelevant to the case of the Adula, and was, to a certain extent, a contradiction of his testimony before the prize commissioners that he was a loyal subject of Spain, bore a Spanish passport, and carried a bill of health *viséd* by the Spanish consul at Kingston. It would throw the whole practice in prize cases into confusion if the testimony, taken *in preparatorio*, when the facts are fresh in the minds of the witnesses, were subject to be contradicted by the same witnesses after its weak points had been developed. It was said by Mr. Justice Story in *The Pizarro*, 2 Wheat. 227: "Nor should the captured crew have been permitted to be reëxamined in court. They are bound to declare the whole truth upon the first examination; and if they fraudulently suppress any material facts, they ought not to be indulged with an opportunity to disclose what they please, or to give color to their former statements after counsel has been taken, and they know the pressure of the cause. Public policy and justice

equally point out the necessity of an inflexible adherence to this rule."

Upon the whole, we think the decree of the District Court was correct, and it is therefore *Affirmed.*

MR. JUSTICE SHIRAS, with whom concurred MR. JUSTICE GRAY, MR. JUSTICE WHITE and MR. JUSTICE PECKHAM, dissenting.

I cannot concur in the judgment of the court in this case, and shall state my views briefly, without entering at length upon a discussion in support of them.

By a joint resolution of the Senate and House of Representatives of the United States, approved April 20, 1898, it was declared "That the people of the Island of Cuba are, and of right ought to be, free and independent." "That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the Island of Cuba, and withdraw its land and naval forces from Cuba and Cuban waters." "That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States to such extent as may be necessary to carry these resolutions into effect." "That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people." 30 Stat. 738.

By an act approved April 25, 1898, Congress declared "That war be, and the same is hereby, declared to exist, and that war has existed since the twenty-first day of April, A.D. 1898, including said day, between the United States of America and the Kingdom of Spain." 30 Stat. 364, c. 189.

On April 22, a blockade of the north coast of Cuba between Cardenas and Bahia Honda, and of Cienfuegos on the south

coast, was declared by the President, and on June 27 the President by proclamation gave notice that the Cuban blockade had been extended to include all the ports on the southern coast between Cape Frances and Cape Cruz. Neither of these proclamations included the port of Guantanamo, nor was any blockade of that port ever proclaimed by the President.

The Adula was a British vessel, and on June 28 she left the British port of Kingston, in the Island of Jamaica, bound, according to the instructions from the agent of the Atlas Steamship Company, the owners, to Captain Yeates, the master of the vessel, directly to the port of Guantanamo. Among the instructions, found on the vessel when she was captured, were the following:

"I enclose herein a copy of the agreement under which your vessel is proceeding on, and on board the ship will be the charterer, to whom I now introduce you, Mr. José R. Solis, and I will ask you to show him every attention on the voyage.

"You will see by a perusal of the agreement that you are on a voyage wholly and solely for the conveyance of refugees from the ports named to Kingston.

"On your arrival at Guantanamo, to which port you will proceed direct, you will find, no doubt, American war ships off the port. You will, when signalled to, stop immediately and communicate to the commanding officer the voyage that you are on, and in fact you can show him these sailing orders, and I do not think that the commanding officer will make any trouble whatever to your continuing the voyage into the port. You must be careful on your arrival there not to interfere or in any way make any observations or sketches of anything you may see or hear of, but adhere strictly to the duties of your ship. At Guantanamo it is likely there may be some difficulty in obtaining a pilot, and if the commanding officer gives you permission to proceed it is just possible that he may be able to tell you where you can obtain the services of a pilot to go in."

On the afternoon of the 29th June the Adula approached the harbor of Guantanamo, and there met the United States war vessel Vixen. It was testified by Captain Yeates before

the prize commission as follows: "We passed one vessel. I think it was the Vixen. He fired a gun. I stopped immediately, and he told me to proceed. He did not stop his engines at all; just steamed right on by. Captain Forwood told me I should see vessels of war around there. When the Vixen hailed me we were about half a mile from the entrance of the bay, and about four miles from where we anchored." This evidence was not contradicted, and, in respect to the permission to proceed, was corroborated by one of the crew of the Adula.

After the vessel had entered and anchored in the bay she was seized by the Marblehead, a war ship of the United States, which was lying inside the bay, and was sent to Savannah, where, on July 28, a decree of condemnation was entered against her. No goods of a contraband character were on the vessel.

Upon these admitted facts, there was no duly constituted blockade of Guantanamo existing when the Adula sailed for and entered that port.

On the contrary, by the successive Presidential proclamations of blockade, that port was left free and open for the entrance of neutral vessels. Indeed, it may be fairly said that, in the special circumstances of our war with Spain, those proclamations were intended to permit, if not to invite, the continuance of commerce in goods, not contraband, in all the Cuban ports not included within the limits defined. The United States were not carrying on warlike operations against the people of Cuba. They were declared, by the joint resolution of the two houses of Congress, to be free and independent, and the Government of Spain was called upon to relinquish its government, and to withdraw its land and naval forces from Cuba and Cuban waters. It was notorious that great misery and destitution had been caused among the inhabitants by the military operations of the Spanish army in a long and fruitless effort to subdue the revolutionary movement. Indeed, that condition of the people of Cuba was one of the principal inducements to the United States to intervene on their behalf.

It may be well here to refer to the message of the President

to Congress, of the date of April 11, 1898, wherein will be found the following statements:

"Our people have beheld a once prosperous community reduced to comparative want, its lucrative commerce virtually paralyzed, its fields laid waste, its mills in ruins, and its people perishing by tens of thousands from hunger and destitution. . . . The policy of devastation and concentration, inaugurated by the Captain General's bando of October 21, 1896, in the province of Pinar del Rio, was thence extended to embrace all of the island to which the power of the Spanish arms was able to reach by occupation or by military operations. The peasantry, including all dwelling in the open agricultural interior, were driven into the garrison towns or isolated places held by the troops."

And, after reciting the fact that he had made an appeal to the American people to furnish succor to the starving sufferers in Cuba, the President concluded:

"In view of these facts and of these considerations I ask the Congress to authorize and empower the President to take measures to secure a full and final termination of hostilities between the Government of Spain and the people of Cuba, and to secure in the island the establishment of a stable government, capable of maintaining order and observing its international obligations, insuring peace and tranquillity and the security of its citizens as well as of our own, and to use the military and naval forces of the United States as may be necessary for these purposes. And in the interest of humanity and to aid in preserving the lives of the starving people of the island, I recommend that the distribution of food and supplies be continued, and that an appropriation be made out of the public treasury to supplement the charity of our citizens."

The policy of our Government, in respect to the rights of neutrals, was further made to appear in the President's proclamation of April 26, 1898, declaring our adhesion to the rules of the Declaration of Paris, whereby important modifications, in recognition of the rights of neutrals and of principles of humanity, were introduced into international law.

What was more natural, then, than that our Government

Dissenting Opinion: Shiras, Gray, White, Peckham, JJ.

would approve all efforts to furnish food to those famishing people, and to aid them in escaping from the seat of war? It appears that the Adula, after the declaration of war, had made several voyages to Cuban ports, with the express permission of the American consul at Kingston; had brought away several hundred refugees, chiefly women and children, and was engaged in a similar errand when seized.

It is, however, claimed that an actual blockade of Guantanamo had been established by Admiral Sampson early in June, which was in existence at the time the Adula entered that port, and that her master had knowledge of such blockade before leaving Kingston.

To declare a blockade effective against neutrals not carrying contraband goods is said by all the authorities to be one of the highest acts of sovereignty, not to be resorted to except for reasons based on well-known principles of modern warfare, and to be proclaimed so as to give full notice to friendly and neutral nations.

As was said by this court, through Mr. Justice Grier, in *Prize cases*, 2 Black, 635, 665: "Neutrals have a right to challenge the existence of a blockade *de facto*, and also the authority of the party exercising the right to institute it. They have a right to enter the ports of a friendly nation for the purposes of trade and commerce, but are bound to recognize the rights of a belligerent, engaged in actual war, to use this method of coercion, for the purpose of subduing the enemy. . . . That the President, as the executive chief of the Government and commander-in-chief of the Army and Navy, was the proper person to make such notification, has not been and cannot be disputed."

So it was held by Sir William Scott, in *The Henrick and Maria*, 1 Rob. 123, 125, that "notification of a blockade is an act of high sovereignty, and not to be extended by those employed to carry it into execution. . . . A declaration of blockade is a high act of sovereignty; and a commander of a King's ship is not to extend it."

"Where a blockade has been declared by the Government, the commander of the blockading squadron has no discretion-

ary power to extend its limits. If he prohibits neutral ships from entering ports not embraced in the terms of the blockade he was appointed to enforce, the warning is illegal, and no penalty is incurred by the neutral master by whom it is disregarded." 1 Duer Ins. 647, sec. 23.

"A declaration of blockade is a high act of sovereignty, and it is usually made directly by the government to which the blockading squadron belongs. A blockade is however in some cases declared by an officer of a belligerent power, and when so declared it will affect the subjects of neutral nations as far as it is authorized, or adopted and ratified, by his government. The implied authority in this respect vested in a naval commander is much greater at a distance from his government than when he is near it. To affect neutral nations, it must be laid by competent authority, and they are affected only in the extent to which it is so laid." 1 Phillips on Insurance, 466.

As it does not appear that the Government delegated any authority to Admiral Sampson to declare a blockade of the port of Guantanamo, but declared a limited and specified blockade of portions of the Cuban coast by Presidential proclamation, leaving the port in question free and open to neutral commerce, in goods not contraband, it follows that for Admiral Sampson to declare a blockade of such port would have been, on his part, an effort to defeat the policy of his Government, which, as we have seen, was shown, by the proclamations and messages of the President, to have intended to leave open a large portion of the Cuban coast, and ports included therein, to neutral and friendly commerce, designed to furnish food to our starving allies, and to enable their women and children to flee from the oppression under which they were suffering.

Moreover, it does not appear that Admiral Sampson claimed or exercised any right to declare a blockade of Guantanamo. Doubtless he occupied that bay and its adjacent waters with his war vessels, and that gave him a right to visit and search even neutral vessels, to discover whether they carried contraband goods. But this did not warrant any vessel of his

squadron to seize a neutral ship, not carrying contraband goods, when entering a port in effect left free by the proclamation of the President.

But, even if it were conceded that the American commander could establish, without proclamation, a valid actual blockade of the port in question, it would still be true, in my opinion, that the seizure of the Adula was contrary to well-established principles of international law.

When a blockade of a given coast or port of one belligerent has been declared by the sovereign power of another, all vessels of neutral or friendly nations are thereby supposed to be visited with notice of such blockade, and it has been held that if they sailed for the blockaded port, with the intent to enter it, and approach it for that purpose, they are subject to seizure and condemnation, and that they cannot even approach the blockaded port for the purpose of making inquiries of the blockading vessels, since such liberty might lead to attempts to violate the blockade under pretext of approaching for the purpose of making such inquiries. *The Cheshire*, 3 Wall. 231.

But, in the case of a blockade established by a naval officer, acting upon his own discretion, without governmental proclamation, neutrals are not visited with implied notice of the existence of such a blockade, and they may rightfully sail for such a blockaded port, and if, when approaching it, armed vessels are seen to be in its immediate neighborhood, they may apply to such vessels for information and for leave to enter, without subjecting themselves to capture. The duty of the blockading squadron, if objection exists to permitting neutral vessels to enter, is to warn them off. If, after such warning, the neutral vessels, disregarding it, attempt to enter, they are liable to seizure.

As was said in the case of *The Circassian*, 2 Wall. 135, 150, which was a case where the blockade had been proclaimed by the American government: "There is a distinction between simple and public blockades which supports this conclusion. A simple blockade may be established by a naval officer, acting upon his own discretion, or under direction of superiors, without governmental notification; while a public blockade is

not only established in fact, but is notified, by the government directing it, to other governments. In the case of a simple blockade the captors are bound to prove its existence at the time of capture; while, in the case of a public blockade, the claimants are held to proof of discontinuance in order to protect themselves from the penalties of attempted violation. The blockade of the rebel ports was and is of the latter character. It was legally established and regularly notified by the American government to the neutral governments. Of such a blockade, it was well observed by Sir William Scott: 'It must be conceived to exist till the revocation of it is actually notified.' The blockade of the rebel ports, therefore, must be presumed to have continued until notification of discontinuance."

In *Fitzsimmons* v. *Newport Ins. Co.*, 4 Cranch, 185, 198, it was held that the fact of clearing out for a blockaded port is, in itself, innocent, unless accompanied by other incidents; that the offence consists in persisting in attempting to enter the interdicted port after having been warned; and it was said by Chief Justice Marshall:

"The right to treat the vessel as an enemy is declared by Vattel to be founded on the attempt to enter, and certainly this attempt must be made by a person knowing the fact. But this subject has been precisely regulated by the treaty between the United States and Great Britain, which was in force when this condemnation took place. That treaty contains the following clause:

"'And whereas it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is either besieged, blockaded or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place, but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless, after notice, she shall again attempt to enter; but she shall be permitted to go to any other port or place she may think proper.'

"This treaty is conceived to be a correct exposition of the law of nations; certainly it is admitted by the parties to it, as between themselves, to be a correct exposition of that law, or

to constitute a rule in the place of it. Neither the law of nations nor the treaty admits of the condemnation of the neutral vessel for the intention to enter a blockaded port, unconnected with any fact."

The distinction between a blockade declared by a government and a blockade *de facto* is thus stated by Chancellor Kent:

"A notice to a foreign government is a notice to all the individuals of that nation; and they are not permitted to aver ignorance of it, because it is the duty of the neutral government to communicate the notice to their people.

"In the case of a blockade without regular notice, notice in fact is generally requisite; and there is this difference between a blockade regularly notified, and one without such notice, that, in the former case, the act of sailing for the blockaded port, with the intent to evade it, or to enter it contingently, amounts, from the very commencement of the voyage, to a breach of the blockade; for the port is to be considered as closed up, until the blockade be formally revoked, or actually raised; whereas, in the latter case of a blockade *de facto*, the ignorance of the party as to its continuance may be received as an excuse for sailing to the blockaded place, on a doubtful and provisional destination."

It should be noted that the American cases cited, on behalf of the captors, to the effect that sailing from a neutral port to a blockaded port is, in itself, a violation of the blockade, were cases in which there had been a Presidential proclamation, of which neutral vessels were bound to take notice. *The Circassian*, 2 Wall. 135; *The Admiral*, 3 Wall. 603.

It should further be considered that in the President's proclamation of April 22, 1898, establishing the extent of the blockade, there was contained the following provision:

"Any neutral vessel approaching any of said ports, or attempting to leave the same, without notice or knowledge of the establishment of such blockade, will be duly warned by the commander of the blockading forces, who will indorse on her register the fact, and the date, of such warning where such instrument was made; and if the same vessel shall again

attempt to enter any blockaded port she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as prize, as may be deemed advisable." 30 Stat. 1769.

Of course, if the blockade of Guantanamo was illegal, as inconsistent with the terms and intent of the President's proclamations, no consideration of the evidence regarding the movements of the vessel is called for, and it is a clear case for restitution. In such a case, no importance can be ascribed to any supposed notice to the owners of the ship. The Admiral's want of power to override the policy and intentions of the Government cannot be supplied by imputing to the vessel a knowledge of an actual occupation of the port by armed vessels of the United States. Such occupation would be no reason why neutral ships, not carrying contraband cargo, might not fearlessly approach and enter the harbor.

If, however, the other view be taken, namely, that it was competent for the Admiral, of his own motion, to establish a blockade, still, as we have seen, neutral vessels were entitled, on principle and authority, to a warning by the blockading squadron, and could only become lawful prize by disregarding the warning, and renewing the attempt to enter. Mere knowledge by the neutral vessel that vessels of war occupied the harbor and adjacent waters would not constitute notice or knowledge of a blockade; she would be entitled to an actual warning. *Maryland Ins. Co.* v. *Woods*, 6 Cranch, 29.

The Adula received no such warning. When she approached the harbor she was hailed by a war vessel, the Vixen, and was told to proceed. If, by telling the Adula to proceed, the commander of the Vixen is to be understood as taking charge of the Adula as engaged in an attempt to break the blockade, there was, of course, no warning. If, what seems the natural import of the language, the commander of the Vixen gave the neutral vessel permission to enter the harbor, not only was there no warning, but such permission protected her from the subsequent seizure after she had entered and anchored in the harbor.

Dissenting Opinion: Shiras, Gray, White, Peckham, JJ.

But it is contended that the Adula had actual knowledge of the existence of the blockade when she sailed from Kingston, and that such knowledge deprived her of the right to a warning.

As already said, if the blockade had been regularly proclaimed by the United States government, the Adula, as a neutral vessel, if aware of the blockade, could not lawfully have sailed from Kingston and approached Guantanamo with an intention to enter it unless intercepted. It is well settled that, in the case of a proclaimed blockade, the neutral vessel may not, with a knowledge of the proclamation, approach the prohibited port, even for the purpose of inquiring from the vessels in occupation whether the blockade was still in existence. The reason given for such a decision is that it would seriously affect the efficiency of the blockade if ships were permitted to approach the blockaded port on pretext of inquiry, and thus be enabled to slip in if there was a momentary absence of a blockading vessel.

But different principles prevail in the case of a blockade *de facto*. Then, neutral vessels may, even with knowledge that such a blockade had been in existence, sail for such port with a clear right to inquire whether the blockade was still in force, and to enter the port if it is found not to be actually blockaded. The reason for the distinction, given in the authorities, is that a proclaimed blockade is deemed to continue until the blockade is raised by a declaration of the power that established it. But a simple or *de facto* blockade lasts only so long as the blockading squadron chooses to maintain it by a present and actual force. The reasons for constituting such a blockade may cease at any time, and a neutral vessel, on a peaceful voyage, and not carrying a contraband cargo, may lawfully sail for such a port, and, if when she reaches it the blockade continues, is entitled to a warning.

Thus far it has been assumed that the Adula had actual knowledge of the blockade when she sailed from Kingston, and it has been shown that, in the case of a blockade of the character that this one is claimed to have been, namely, one created by and depending on the will of the commander of

the fleet, the neutral was entitled to a warning, whether she had or not previous information that a blockade had existed some time before.

But, in point of fact, as I read the evidence, the Adula had not such previous knowledge, but approached Guantanamo Bay, within the terms of the President's proclamation, without notice or knowledge of the establishment of a blockade, and was therefore entitled to be "duly warned by the commander of the blockading forces."

Captain Yeates, Purser Williamson and Solis testified in direct terms that they had no knowledge or information before sailing that Guantanamo was blockaded. The only testimony to the contrary was that of Morris, a colored seaman, who said that about three days before he left Kingston he heard that Guantanamo was blockaded. He does not give the source of his information, or pretend that he made known the matter to the owners or to the officers of the vessel. Probably all he meant was that he had heard that the United States fleet was at Guantanamo. The other facts plainly corroborate the captain's testimony. Consider the direction contained in the instructions given the captain, and shown in the record: "On your arrival at Guantanamo, to which port you will proceed direct, you will find, no doubt, American war ships off the port. You will, when signalled to, immediately stop and communicate to the commanding officer the voyage you are on, and, in fact, you can show him these sailing orders, and I do not think that the commanding officer will make any trouble whatever to your continuing the voyage into the port. . . . At Guantanamo it is likely there may be some difficulty in obtaining a pilot, and if the commanding officer gives you permission to proceed it is just possible that he may be able to tell you where you can obtain the services of a pilot to go in." Such instructions are not consistent with knowledge, on the part of the general agent who gave them, that a blockade was actually in force, nor with any intention to violate it.

So, too, the conversation that Solis, the charterer, had with the United States consul at Kingston, in which he sought to

obtain a passport for the voyage, and in which he informed the consul of the object of the voyage, and of his intention to ask permission of the American Admiral to enter the port, shows that no clandestine or improper voyage was intended. A person designing to violate a blockade assuredly would not inform the consul of the nation whose vessels were maintaining the blockade of the time and circumstances of his voyage.

Solis further testified that he first heard of the blockade on the Adula on June 28; that he then heard that on the 27th there was issued an order of the President of the United States declaring a blockade, etc. But as it is not pretended that the President had issued any such proclamation, it is evident that Solis was speaking of a mere rumor; and he immediately added: "I understood Guantanamo was not declared officially blockaded, although there were some vessels there. I got that information from newspapers in Kingston and from those newspapers I got the information that marines had been landed at the entrance to the bay on the east side."

It is stated, in the opinion of the majority, that the American consul warned Mr. Forwood, the agent of the ship at Kingston, of the existence of the blockade. This statement is based on Forwood's recital of what passed between the consul and himself, in the following language: "Well, Forwood, I would not advise you to let the ship go. They won't let her into Guantanamo, and they will be watching for her." So far from this language importing a notification of an existing blockade, it rather implies the contrary — that the voyage would be fruitless because the consul believed that the ship would not be allowed to enter the destined port. It certainly cannot be regarded as an official notice of an existing blockade, as is claimed in the argument for the captors. The consul was right, in the existing circumstances, in declining to give the permit desired; but he had no power to declare a port to be in blockade, nor did he pretend to do so.

So far, therefore, as respects the matters urged as evidence, that the Adula, her owners, master or charterer knew, or had any good reason to believe, that, at the time she sailed, there

was an existing blockade of the port of Guantanamo, they seem to me to be "trifles light as air."

What this court said, through Mr. Justice Grier, in the *Prize cases*, 2 Black, 635, may well be repeated here:

"All reasonable doubts shall be resolved in favor of the claimants. Any other course would be inconsistent with the high administration of the law, and the character of a just government."

Some make-weights are attempted to be thrown into the scales by adverting to the fact that Solis had passports from the Spanish consul, and the following cases are cited in the majority opinion: *The Julia*, 8 Cranch, 181; *The Aurora*, 8 Cranch, 203; *The Hiram*, 1 Wheat. 440, and *The Ariadne*, 2 Wheat. 143.

The case of *The Julia* was thus stated by Mr. Justice Story:

"It is sufficient to declare that we hold that the sailing on a voyage under the license and passport of protection of the enemy in furtherance of his views or interests, constitutes such an act of illegality as subjects the ship and cargo to confiscation as prize of war."

Surely; but in the present case there was no license or passport of protection for the voyage in furtherance of the views and interests of the enemy, but the obnoxious instrument was a personal passport to Solis, dated April 13, 1897, more than a year before the war, in the following terms: "Don José R. Solis Velasquez, native of Santiago de las Vegas, province of Havana, by profession a merchant, dwells in Marina street, No. —, and resides habitually in that ward and at that number." Were these personal passports, one given long before the war and the other a mere permission to enter cities on the island, at all similar to the case of *The Julia*, where, as the opinion in that case shows, "The master was a part owner of the vessel and cargo, and the regular depository of all the *papers connected with the voyage*. It is utterly incredible that he should not recollect, in his examination, the existence of these British documents. They were put on board for the *special safeguard and security of the vessel and cargo*."

In the case of *The Aurora*, a formal passport or permit had

been given by the British consul to "the American ship Aurora, William Augustus Pike, master, burthen 257 tons, now lying in Newburyport, etc., . . . requesting all officers commanding his majesty's ships of war, or private armed vessels belonging to subjects of his majesty, not only to suffer the said Aurora to pass without molestation, but also to extend to her all due assistance and protection in the prosecution of her voyage to the West Indies," etc. The judgment of the court was thus stated: "The acceptance and use of an enemy's license on a voyage to a neutral port, prosecuted in furtherance of the enemy's avowed objects, is illegal, and subjects vessel and cargo to confiscation."

In the case of *The Hiram*, the vessel was sailing under protection of an enemy's license to the vessel, and this was held to have been in principle an offence of trading with the enemy. In the case of *The Ariadne*, the vessel was sailing with a license or passport of protection from the enemy's admiral.

It is scarcely necessary to say that a personal passport given to Solis, a Cuban, more than a year before the war, cannot be regarded as intended as a passport or protection to a British vessel, sailing under a British flag, on an errand friendly to the United States and their allies. And as respects the permission Solis had obtained from the Spanish consul to enter the cities to which he was bound, "and take passengers, refugees," such permission was in furtherance of humanity and not of any warlike object or interest.

The conclusions reached may be summarized thus:

(1) The port of Guantanamo was intentionally and as matter of policy left open and free to neutral commerce, not contraband, by the President's proclamations, and the Adula had a clear right to sail for and enter that port, even if aware that war vessels of the United States were in occupancy of the port. Such war vessels would, of course, have a right to prevent the Adula from entering the port if such entry would interfere with any military operation in hand.

(2) It was not competent for the commander of the fleet to extend the proclaimed blockade so as to include a port exempted by the President's proclamation, and to thus make prize

of war a neutral vessel approaching such port on a peaceful errand.

(3) If an immediate exigency — and none such is shown to have existed in the present case — justified the Admiral of the United States in prohibiting the entrance of neutral vessels, sound principles of international law required that such vessels should be warned on approaching the port, and they could not be seized as lawful prize, unless they disregarded the warning and attempted again to enter.

This is no time, in the history of international law, for the courts of the United States, in laying down rules to affect the rights of neutrals engaged in lawful commerce, to extend and apply harsh decisions made a hundred years ago, in the stress of the bitter wars then prevailing, when the rights of the comparatively feeble neutral states were wholly disregarded. Still less should our courts, as it seems to me was done in this case by the District Court, adopt strained and unnatural constructions of facts and circumstances, in order to subject vessels of nations with whom we are at peace to seizure and condemnation.

I am authorized to say that MR. JUSTICE GRAY, MR. JUSTICE WHITE and MR. JUSTICE PECKHAM concur in this dissent.